

1978 WL 34877 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
April 27, 1978

***1 RE: Newberry County Magistrates**

Mr. Neal Forney
Assistant Director
South Carolina Court Administration
Post Office Box 11788
Columbia, SC 29211

Dear Mr. Forney:

You have asked whether the magistrates of Newberry County are required by Section 14-2969 of the 1962 Code (1937 (40) 120) as 'officers of the county' to turn over to the county treasurer all fees collected. As I understand the situation, there is no question but that all fees collected in criminal cases are to be turned over to the county treasurer in accordance with Act No. 1106 of 1966, p. 2772. Therefore, the question presented is confined to civil fees and their receipt.

Section 14-2969 of the 1962 Code provides, in pertinent part:

All officers of the county shall be on a salary basis, and any and all fees collected by any officer of the county shall be turned over to the county treasurer and by him placed in such fund or funds as he shall be directed by the county legislative delegation to place them in. The salaries of all officers of the county shall be fixed by the county legislative delegation and the salaries so fixed shall be in lieu of all fees which any officer might otherwise receive under law.

The term 'county officer' does not necessarily comprehend every officer whose duty pertains to a county. Our research has disclosed no definition of that term in our statutory or case law, therefore, guidance must be sought from the general law. While it has been said that whether or not a person is to be classified as a county officer may depend somewhat upon the particular question involved and that it might be impossible to lay down any general rule, the term 'county officers,' in its most general sense, applies to officers whose territorial jurisdiction is coextensive with the county for which they are elected or appointed, and it has been held that an officer is none the less a county officer because he exercises certain powers, in particular instances, outside the county, because he exercises some duties on behalf of the state, or because, by virtue of statutory restrictions, his district is less than the whole county. In a more precise and restricted sense, the term means officers by whom the county performs its usual political functions; its functions of government. 20 C.J.S., Counties, Section 100, pp. 888-9.

It should be recognized that magistrates might properly be classified as other than county officers depending upon the particular question and context presented. However, in the present context it is certain, in our opinion, that Newberry County magistrates are county officers within the meaning and intent of Section 14-2969 of the 1962 Code.

The major factors supporting the foregoing conclusion in this financial context are that Newberry County magistrates and their staffs are paid from the county budget according to salaries set by the county's governing body. Also, the collection of fees by magistrates is limited to those cases arising within the county boundaries. Additionally, such fees have customarily been turned over by the magistrate to the county treasurer, presumably in accordance with the original 1937 Act.

*2 You have also referenced the provisions of Section 14-2968 of the 1962 Code (1949 (46) 96). However, it is our further opinion that the provisions of that section do not apply to Newberry County magistrates since they are not among those officials specifically named therein. On the other hand, Section 14-2969 is addressed to 'all officers of the county.' Inasmuch as Newberry County magistrates are county officers, as previously discussed, the provisions of Section 14-2969 would apply.

Therefore, it is the opinion of this Office that the magistrates of Newberry County are required by Section 14-2969 of the 1962 Code as 'officers of the county' to turn over to the county treasurer all fees collected in civil cases.

I trust the preceding discussion adequately answers your question, however, if any further explanation be required, please feel free to contact me.

With best regards, I am
Very truly yours,

Richard P. Wilson
Assistant Attorney General

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