

1976 S.C. Op. Atty. Gen. 390 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4527, 1976 WL 23144

Office of the Attorney General

State of South Carolina

Opinion No. 4527

November 24, 1976

*1 The Honorable Thomas E. Smith, Jr.

State Senator

100 Walnut Street

Pamplico, South Carolina 29583

Dear Tom:

Thank you for your letter of November 23, 1976, asking whether the County of Florence can provide for an additional magistrate to serve on nights, weekends and holidays so as to make available a magistrate who can act when other magistrates are not available.

I believe that under the constitutional provision of Article V, Section 23, that the number of magistrates must be provided by statute. The constitutional provision directs the Governor, with the advice and consent of the Senate, to appoint a number of magistrates for each county 'as provided by law.' The previous section was Article V, Section 20, which uses practically the same language. I think that this clearly means the creation of magistrate positions as provided by State statute. There is no power vested in the counties under the Home Rule Bill or under the Judicial Reform Act which would authorize counties to make provision for the number of magistrates.

The constitutional provision may authorize special legislation in this regard but only a court test would prove this. The most probable effective route would be to establish the position of ministerial magistrates, or whatever designation is to be given them, and vest them with specific powers which would be uniform throughout the State. This would meet the provisions of the Judicial Reform Amendment. Statutes could then be enacted authorizing these special magistrates as the need for them is determined by the Legislature which, of course, would rest with the local Delegations.

As I am serving on a sub-committee of the Judicial Council which deals with magistrates, I think that this is an appropriate problem for us to consider. If you wish anything done in this regard, please call upon me.

With best wishes,

Very truly yours,

Daniel R. McLeod

Attorney General

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