

1975 WL 28860 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 27, 1975

*1 The Honorable S. Norwood Gasque
Member
House of Representatives
Drawer 368
Latta, South Carolina 29565

Dear Norwood:

Your letter of May 23, 1975, requests the opinion of this Office as to the constitutionality of a bill now before you. The bill reads as follows:

'Section 1. Notwithstanding the provisions of Section 43-51 of the 1962 Code or any other law to the contrary, the civil jurisdiction of magistrates in Florence County shall extend to cases where the amount in controversy does not exceed five hundred dollars.'

It is my opinion that such a statute would be unconstitutional as in violation of Article V, Section 23, of the Constitution. This section reads as follows:

'The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county, as provided by law. The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction. The terms of office need not be uniform throughout the State but shall be uniform within each county.'

The magisterial system is a part of the unified jurisdictional system as contemplated by Article V. The jurisdiction, in my opinion, must, as prescribed in Section 1 of that Article, be fixed by general law. The bill before you proposes a special law and, in view of the position of the Supreme Court of this State as reflected in the recently decided case of Cort Industries, I think that alteration of civil jurisdiction in the case of magistrates' courts must be accomplished by a general law.

Magistrates are provided for by a separate section of the Constitution and reference to this section, as set forth above, indicates that terms of office need not be uniform, but this is the only departure from the general scheme of jurisdiction and terms for the office of magistrate. No such provision is made with respect to jurisdictional limits, which are authorized to be fixed by the General Assembly. The implication from this wording would seem to be that where the General Assembly meant to authorize a departure, it has specifically so stated, but it has pointedly not made such a departure in the case of jurisdictional limits.

For these reasons, it is my opinion that the bill would be unconstitutional.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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