CHAPTER 1

Magistrates Generally

**SECTION 22‑1‑10.** Appointment; term and territorial jurisdiction; training, certification or recertification requirement.

(A) The Governor, by and with the advice and consent of the Senate, may appoint magistrates in each county of the State for a term of four years and until their successors are appointed and qualified, or their positions are terminated as provided in subsection (B), Section 22‑1‑30, or Section 22‑2‑40.

Magistrates serving the counties of Abbeville, Allendale, Bamberg, Beaufort, Calhoun, Cherokee, Chesterfield, Clarendon, Colleton, Dillon, Edgefield, Florence, Greenville, Hampton, Jasper, Lancaster, Lee, Marion, McCormick, Oconee, Pickens, Saluda, Sumter, and Williamsburg shall serve terms of four years commencing May 1, 1990. Magistrates serving the counties of Aiken, Anderson, Barnwell, Berkeley, Charleston, Chester, Darlington, Dorchester, Fairfield, Georgetown, Greenwood, Horry, Kershaw, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Spartanburg, Union, and York shall serve terms of four years commencing May 1, 1991.

At least ninety days before the date of the commencement of the terms provided in the preceding paragraph and every four years thereafter, each county governing body must inform, in writing, the Senators representing that county of the number of full‑time and part‑time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned. If the county governing body fails to inform, in writing, the Senators representing that county of the information as required in this section, then the compensation, hours, and location of the full‑time and part‑time magistrate positions available in the county remain as designated for the previous four years.

Each magistrate’s number of work hours, compensation, and work location must remain the same throughout the term of office, except for a change (1) specifically allowed by statute or (2) authorized by the county governing body at least four years after the magistrate’s most recent appointment and after a material change in conditions has occurred which warrants the change. Nothing provided in this section prohibits the raising of compensation or hours and compensation during a term of office. No magistrate may be paid for work not performed except for bona fide illness or as otherwise provided by law.

The number of magistrates to be appointed for each county and their territorial jurisdiction are as prescribed by law before March 2, 1897, for trial justices in the respective counties of the State, except as otherwise provided in this section.

(B)(1) No person is eligible to hold the office of magistrate who is not at the time of his appointment a citizen of the United States and of this State, and who has not been a resident of this State for at least five years, has not attained the age of twenty‑one years upon his appointment, and has not received a high school diploma or its equivalent educational training as recognized by the State Department of Education.

(2) Notwithstanding the educational qualifications required in item (1):

(a) On and after July 1, 2001, no person is eligible for an initial appointment to hold the office of magistrate who (i) is not at the time of his appointment a citizen of the United States and of this State, (ii) has not been a resident of this State for at least five years, (iii) has not attained the age of twenty‑one years upon his appointment, and (iv) has not received a two‑year associate degree.

(b) On and after July 1, 2005, no person is eligible for an initial appointment to hold the office of magistrate who (i) is not at the time of his appointment a citizen of the United States and of this State, (ii) has not been a resident of this State for at least five years, (iii) has not attained the age of twenty‑one years upon his appointment, and (iv) has not received a four‑year baccalaureate degree.

(C) Notwithstanding any other provision of law relating to the terms and qualifications of magistrates:

(1) All magistrates shall complete a training program or pass certification or recertification examinations, or both, pursuant to standards established by the Supreme Court of South Carolina. The examination must be offered at least three times each year.

(a) Magistrates appointed for the first time on or after the effective date of this act shall complete the training program and pass the certification examination within one year after taking office, or before April 30, 1995, whichever is later.

(b) Magistrates serving the counties of Abbeville, Allendale, Bamberg, Beaufort, Calhoun, Cherokee, Chesterfield, Clarendon, Colleton, Dillon, Edgefield, Florence, Greenville, Hampton, Jasper, Lancaster, Lee, Marion, McCormick, Oconee, Pickens, Saluda, Sumter, and Williamsburg, as of the effective date of this act, shall pass a certification examination before April 30, 1995.

(c) Magistrates serving the counties of Aiken, Anderson, Barnwell, Berkeley, Charleston, Chester, Darlington, Dorchester, Fairfield, Georgetown, Greenwood, Horry, Kershaw, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Spartanburg, Union, and York, as of the effective date of this section, shall pass a certification examination before April 30, 1996.

(d) Every magistrate shall pass a recertification examination within eight years after passing the initial certification examination, and at least once every eight years thereafter.

(2) If any magistrate does not comply with these training or examination requirements, his office is declared vacant on the date the time expires, or when he is notified, as provided in subsection (D), whichever is earlier.

(D) Upon written notification of the Supreme Court or its designee to the affected magistrate and the Governor of the failure of the magistrate to complete the training program or pass the certification examination required pursuant to subsection (C), the magistrate’s office is declared vacant, the magistrate does not hold over, and the Governor shall appoint a successor in the manner provided by law; however, the Governor shall not reappoint the current magistrate who failed to complete the training program or pass the certification examination required pursuant to subsection (C) to a new term or to fill the vacancy in the existing term.

HISTORY: 1962 Code Section 43‑1; 1952 Code Section 43‑1; 1942 Code Section 3707; 1932 Code Section 3707; Civ. C. ‘22 Section 2241; Civ. C. ‘12 Section 1391; Civ. C. ‘02 Section 983; 1897 (22) 472; 1988 Act No. 678, Part I, Section 4; 1991 Act No. 136, Section 1; 1993 Act No. 152, Section 1; 1996 Act No. 376, Section 1; 2000 Act No. 226, Section 4; 2011 Act No. 70, Section 2, eff June 28, 2011.

Effect of Amendment

The 2011 amendment, in subsection (A), in the first sentence, added “, or their positions are terminated as provided in subsection (B), Section 22‑1‑30, or Section 22‑2‑40”.

CROSS REFERENCES

Constitutional provisions for magistrates, see SC Const, Art 5, Section 26.

Forfeiture of commission upon conviction of failing to perform duty to protect property threatened by mob, see Section 16‑5‑30.

Magistrates and magistrates’ jury selection, see Sections 22‑2‑10 et seq.

Library References

Justices of the Peace 3, 4, 5.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 11 to 14, 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

S.C. Jur. Magistrates and Municipal Judges Section 4, Magistrates‑ Terms and Authority.

S.C. Jur. Magistrates and Municipal Judges Section 8, Magistrates.

Attorney General’s Opinions

Discussion of the impact of Spartanburg County’s transition from a self‑funded insurance plan to the South Carolina Public Employee Benefit Authority’s insurance benefits program on the insurance benefits currently afforded part‑time magistrates. S.C. Op.Atty.Gen. (Dec. 10, 2013) 2013 WL 6699948.

Magistrates are required to retire by end of fiscal year of their 72nd birthday. Prior opinion dated January 13, 1987, which concluded that state judges who reach retirement age after January 1, 1987, were as matter of federal law no longer required to retire at age 70 (or 72), is no longer opinion of this Office. 1992 Op. Atty Gen No 92‑16.

A magistrate may remain in office while he or she is a candidate for another office. S.C. Op.Atty.Gen. (May 22, 1974) 1974 WL 27778.

When a magistrate continues to hold office after the expiration of his term pending the appointment of his successor, he holds such office in a de facto capacity and is entitled to the usual payments and allowances thereof. 1970‑71 Op. Atty Gen, No. 3170, p 137.

One may not run as a write‑in candidate for magistrate at a general election. 1967‑68 Op. Atty Gen, No. 2581, p 285.

Appointment of a successor to a deceased magistrate is for the remainder of the unexpired term, or until a successor is appointed and qualifies. 1964‑65 Op. Atty Gen, No. 1931, p 230.

NOTES OF DECISIONS

In general 2

Constitutional issues 3

Validity 1

1. Validity

Participation in advisory elections required of those seeking the nomination for the office of magistrate, whether by statute or by preferential primary elections of political parties, and the resulting almost universally coerced acceptance by the Governor and the Senate of the nominee of the election, so chills the discretionary power of the Governor and the Senate as to violate the constitutionally mandated method for the appointment of magistrates. State ex rel. Riley v. Pechilis (S.C. 1979) 273 S.C. 628, 258 S.E.2d 433. Justices Of The Peace 3

2. In general

The term of magistrates is fixed both by the Constitution and statute as two years and until their successors are appointed and qualified. Gaffney v. Mallory (S.C. 1938) 186 S.C. 337, 195 S.E. 840.

Under SC Const, Art 5, Section 23 (now Section 26), a magistrate’s jurisdiction is confined to the county for which he is appointed. Dill v. Durham (S.C. 1900) 56 S.C. 423, 35 S.E. 3.

3. Constitutional issues

County and county administrator’s request to Senate for reallocation of county’s three magisterial positions from combination of full‑ and part‑time magistrates to three full‑time magistrates did not abolish part‑time magistrate positions in county, and thus did not violate constitutional rule depriving them of authority to abolish such positions, as reallocation did not constitute change in number of magisterial positions in county. Jayroe v. Newberry County (S.C. 2015) 413 S.C. 176, 775 S.E.2d 382. Justices of the Peace 2

Statute requiring county to notify senatorial delegation representing county in writing of number of magistrate positions available in county, as well as other information, as magisterial terms neared expiration did not unconstitutionally delegate to the county control over number of magistrate positions, as number of magisterial positions in county was determined by statutory formula, subject to agreement between senatorial delegation and county governing body, or to termination as provided for under statute. Jayroe v. Newberry County (S.C. 2015) 413 S.C. 176, 775 S.E.2d 382. Justices of the Peace 8

**SECTION 22‑1‑15.** Magistrates presently serving.

(A) The provisions of Section 22‑1‑10(B) do not apply to a magistrate serving on January 1, 1989, during his tenure in office. A magistrate holding office after January 1, 1989, must achieve a high school education or the equivalent educational training as recognized by the State Department of Education within two years of January 1, 1989, and must submit a certified copy of his high school diploma or certified proof of its recognized equivalent in educational training as established by the State Department of Education to the South Carolina Court Administration. However, this requirement does not apply to a magistrate with at least five years’ service as a magistrate on January 1, 1989. The South Carolina Court Administration must report to the Governor’s Office a magistrate’s failure to submit the proper documentation, and a magistrate’s violation of this subsection terminates his term of office.

(B) The provisions of Section 22‑1‑10(B)(2)(a) and (b) do not apply to a magistrate serving on June 30, 2001, during his tenure in office.

(C) The provisions of Section 22‑1‑10(B)(2)(b) do not apply to a magistrate serving on June 30, 2005, during his tenure in office, and do not apply to a magistrate serving after June 30, 2005, who retires and is reappointed within one year of the date of his retirement and during his tenure in office for the new appointment.

HISTORY: 1988 Act No. 678, Part I, Section 5; 2000 Act No. 226, Section 5; 2000 Act No. 257, Section 9; 2012 Act No. 278, Pt VI, Section 70, eff July 1, 2012.

Effect of Amendment

The 2012 amendment rewrote subsection (C).

Library References

Justices of the Peace 3, 4, 5.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 11 to 14, 60.

**SECTION 22‑1‑16.** Trial observation requirement for new magistrates who are not attorneys.

(A) A magistrate whose initial appointment begins on or after July 1, 2001, and who is not an attorney licensed in this State at the time of his initial appointment may not try a case until a certificate is filed with the Clerk of the Supreme Court stating that the magistrate has observed ten trials. The certificate must state the name of the proceeding, the dates and the tribunals involved, and must be attested to by the judge conducting the proceeding.

(B) The required trial experiences must include the following:

(1) four criminal cases in a magistrates court, two of which must be in a magistrates court where he will not preside;

(2) four civil cases in a magistrates court, two of which must be in a magistrates court where he will not preside;

(3) one criminal jury trial in circuit court; and

(4) one civil jury trial in circuit court.

(C) The trial observations may be undertaken and completed any time after a person has been nominated by the senatorial delegation for the position of magistrate.

HISTORY: 2000 Act No. 226, Section 6.

Library References

Justices of the Peace 4, 5.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 11, 14.

**SECTION 22‑1‑17.** Continuing education.

(A) The South Carolina Court Administration is authorized to establish and determine the number of contact hours to be completed in a continuing education program of two years available to a magistrate who has successfully completed the certification examination. The program must provide extensive instruction in civil and criminal procedures and must encourage magistrates to develop contacts and resources of information in conjunction with their instructors and fellow magistrates.

(B) The program shall be administered through the state’s technical college system and may be used to facilitate continuing legal education opportunities for all magistrates. The technical college system may assess a reasonable fee for each participant in the program in order to pay for the program’s expenses.

(C) The funding for this program shall be provided from fees and costs collected by magistrates or magistrates’ courts and deposited in the general fund of the county.

(D) Subsections (A) and (B) are effective July 1, 2001; however, the planning and development of this program shall begin on or after July 1, 2000, and the effective date for subsections (C) and (D) is July 1, 2000.

HISTORY: 2000 Act No. 226, Section 7.

Library References

Justices of the Peace 4.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 11.

**SECTION 22‑1‑19.** Advisory council on magistrate eligibility, certification examination, and continuing education; membership.

An advisory council shall be established in order to make recommendations to the Supreme Court regarding the eligibility examination, certification examination, and continuing education requirements for magistrates. The council must submit an annual report to the Chief Justice of the Supreme Court or his designee. The council shall be appointed by the Chief Justice to consist of:

(1) a member appointed upon the recommendation of the South Carolina Trial Lawyers Association;

(2) a member appointed upon the recommendation of the South Carolina Association of Criminal Defense Lawyers;

(3) a member appointed upon the recommendation of the South Carolina Solicitor’s Association;

(4) a member appointed upon the recommendation of the South Carolina Sheriff’s Association;

(5) a member appointed upon the recommendation of the South Carolina Victims Assistance Network;

(6) a member appointed upon the recommendation of the Criminal Justice Academy;

(7) a member appointed upon the recommendation of the State Board for Technical and Comprehensive Education;

(8) a member appointed upon the recommendation of the South Carolina Appleseed Legal Justice Center;

(9) a member appointed upon the recommendation of the Summary Court Judges Association;

(10) a member appointed upon the recommendation of the Dean of the University of South Carolina School of Law;

(11) a member appointed upon the recommendation of the Chairman of the Senate Judiciary Committee;

(12) a member appointed upon the recommendation of the Chairman of the House Judiciary Committee; and

(13) a member appointed upon the recommendation by the Governor.

HISTORY: 2000 Act No. 226, Section 8.

Library References

Justices of the Peace 4.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 11.

**SECTION 22‑1‑20.** Oath.

Before entering upon the discharge of the duties of his office, each magistrate must take in writing the oath of office prescribed in the Constitution before the clerk of the court of common pleas of the county or, in case there be no such clerk, before anyone authorized to administer an oath, and must file the same with the Secretary of State.

HISTORY: 1962 Code Section 43‑2; 1952 Code Section 43‑2; 1942 Code Section 3708; 1932 Code Section 3708; Civ. C. ‘22 Section 2242; Civ. C. ‘12 Section 1392; Civ. C. ‘02 Section 984; 1897 (22) 472.

CROSS REFERENCES

Administration of oaths to magistrates, see Section 14‑17‑340.

Library References

Justices of the Peace 5.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 14.

**SECTION 22‑1‑25.** Mandatory retirement age.

Notwithstanding the provisions of Section 9‑1‑1530 or Section 1‑13‑80(h)(8), (10) or (12), it shall be mandatory for a magistrate to retire not later than the end of the fiscal year in which he reaches his seventy‑second birthday. Any magistrate serving in office on the effective date of this section who has attained the age of seventy‑two years prior to July 1, 1993, may continue to serve until June 30, 1994.

HISTORY: 1993 Act No. 183, Section 2.

Library References

Justices of the Peace 4.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 11.

Attorney General’s Opinions

General Assembly has mandated that magistrate must retire not later than end of fiscal year of his 72nd birthday. However, General Assembly did authorize magistrate in office as of effective date of Section 22‑1‑25 and who has reached 72 years of age prior to July 1, 1993, to continue to serve until June 30, 1994. 1993 Op. Atty Gen No. 93‑49.

**SECTION 22‑1‑30.** Suspension, removal or non‑reappointment.

(A) A magistrate may be suspended or removed by order of the Supreme Court pursuant to its rules for incapacity, misconduct, or neglect of duty. A magistrate’s failure to retire in accordance with Section 22‑1‑25 or a magistrate’s failure to comply with the training and examination requirements of Section 22‑1‑10(C) may subject the magistrate to suspension or removal by order of the Supreme Court.

(B) If a senatorial delegation recommends that the Governor not reappoint a magistrate upon completion of his term of office, the Governor may send a message to the Senate that the magistrate is not reappointed. Upon receipt of the message, the Senate must ratify the message not to reappoint by the confirmation process. If the ratification takes place, the magistrate’s service is terminated at the end of his term and the magistrate does not continue to serve until a successor is appointed. Notice of the ratification must be sent to the Supreme Court.

HISTORY: 1962 Code Section 43‑3; 1952 Code Section 43‑3; 1942 Code Section 3707; 1932 Code Section 3707; Civ. C. ‘22 Section 2241; Civ. C. ‘12 Section 1391; Civ. C. ‘02 Section 983; 1897 (22) 472; 1993 Act No. 181, Section 337; 2000 Act No. 226, Section 9; 2011 Act No. 70, Section 3, eff June 28, 2011.

Effect of Amendment

The 2011 amendment designated the existing text as subsection (A); and added subsection (B).

CROSS REFERENCES

Appointment, term and territorial jurisdiction, training, certification or recertification requirement, see Section 22‑1‑10.

Number and location of magistrates in county, ministerial magistrates, see Section 22‑2‑40.

Library References

Justices of the Peace 11.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 23.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 26, Vacancies, Appointments, Removals, and Suspensions.

S.C. Jur. Magistrates and Municipal Judges Section 11, Suspension, Removal, and Judicial Misconduct.

Attorney General’s Opinions

Any individual may file a complaint with the Commission on Judicial Conduct alleging that a magistrate has committed misconduct or is incapacitated. S.C. Op.Atty.Gen. (Sept. 17, 2013) 2013 WL 5403532.

The Governor should appoint an interim magistrate when a magistrate has been suspended and must also submit an appointment to the Senate should the magistrate be convicted. 1976‑77, Op. Atty Gen, No. 77‑320, p 253.

Pursuant to this section, magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty. 1970‑71 Op. Atty Gen, No. 3094, p 37.

Upon prior notice and a hearing, and where no valid reason exists for postponement, the Governor may consider suspension of a magistrate for failure to dispose of cases within a sixty‑day period. 1970‑71 Op. Atty Gen, No. 3094, p 37.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

The Governor has no power to remove magistrate serving for a full term except after trial and conviction, as provided by the Constitution and the statutes, but he may suspend any magistrate when a showing has been made to him by affidavit that the magistrate is probably guilty of embezzlement and a true bill has been found, and he may suspend for incapacity, misconduct, or neglect of duty, but submit the suspension to the Senate for approval or disapproval; and an attempt of the Governor to remove a magistrate without indictment and conviction is without effect as a removal. McDowell v. Burnett (S.C. 1912) 92 S.C. 469, 75 S.E. 873.

2. Constitutional issues

Statute requiring county to notify senatorial delegation representing county in writing of number of magistrate positions available in county, as well as other information, as magisterial terms neared expiration did not unconstitutionally delegate to the county control over number of magistrate positions, as number of magisterial positions in county was determined by statutory formula, subject to agreement between senatorial delegation and county governing body, or to termination as provided for under statute. Jayroe v. Newberry County (S.C. 2015) 413 S.C. 176, 775 S.E.2d 382. Justices of the Peace 8

**SECTION 22‑1‑40.** Appearance as attorney in case once before magistrate.

It shall be unlawful for any magistrate to appear as attorney at law in any of the courts of this State in any action which may have been before him in his official capacity as such magistrate. Any magistrate who violates the provisions of this section shall forfeit his office.

HISTORY: 1962 Code Section 43‑4; 1952 Code Section 43‑4; 1942 Code Section 3722; 1932 Code Section 3722; Civ. C. ‘22 Section 2256; Civ. C. ‘12 Section 1406; Civ. C. ‘02 Section 998; R. S. 895; 1883 (18) 473; 1900 (23) 698.

Library References

Attorney and Client 22.

Justices of the Peace 11.

Westlaw Topic Nos. 231, 45.

C.J.S. Attorney and Client Sections 135 to 137.

C.J.S. Justices of the Peace Section 23.

Attorney General’s Opinions

The authority of the Governor in certain specific instances to suspend or remove judicial officers of less than statewide jurisdiction includes the power to appoint by executive order an advisory commission to hear complaints and grievances against magistrates, municipal and county judges. 1975‑76 Op. Atty Gen, No. 4244, p 34.

NOTES OF DECISIONS

In general 1

1. In general

Actions of municipal judge who, as an attorney, represented defendants in court after having issued the arrest warrants and/or fixed the amounts of the bonds, constituted professional misconduct within the meaning of the canons of professional ethics and also constituted conduct tending to pollute or obstruct the administration of justice and to bring the courts and the legal profession into disrepute. In re Friday (S.C. 1974) 263 S.C. 156, 208 S.E.2d 535.

**SECTION 22‑1‑50.** Administering oaths; taking renunciations of dower.

Every magistrate shall have power to administer any oath authorized or required by law to be taken and not directed to be administered by another authority and any oath so administered shall, to all intents and purposes, be binding and effectual in law. He may also take renunciations of dower.

HISTORY: 1962 Code Section 43‑5; 1952 Code Section 43‑5; 1942 Code Section 3714; 1932 Code Section 3714; Civ. C. ‘22 Section 2248; Civ. C. ‘12 Section 1398; Civ. C. ‘02 Section 990; G. S. 847; R. S. 889; 1839 (11) 30.

Library References

Justices of the Peace 20, 21.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 26 to 27.

**SECTION 22‑1‑60.** Issuance of receipts for moneys collected.

All magistrates in this State shall issue receipts for all moneys paid to or collected by them. Such receipt shall in each instance state the amount paid to or collected by the magistrate and for what purpose and the title of the cause.

HISTORY: 1962 Code Section 43‑6; 1952 Code Section 43‑6; 1942 Code Section 3726; 1932 Code Section 3726; Civ. C. ‘22 Section 2260; 1912 (27) 698.

**SECTION 22‑1‑70.** Disposition of fines and penalties imposed and collected in criminal cases.

All fines and penalties imposed and collected by magistrates in criminal cases must be forthwith turned over by them to the county treasurers of their respective counties for county purposes; provided, that when a magistrate presides over a municipal court under contract between the municipality and the county governing body as authorized by Section 14‑25‑25, a portion of such fines and penalties imposed and collected shall be turned over to the treasurer of the municipality under the provisions of the contract between the municipality and the county governing body which shall specify the portion to be turned over to the treasurer of the municipality. But when, by law any person is entitled, as informer, to any portion of such fine or penalty, such portion shall be immediately paid over to him. If any magistrate shall neglect or refuse to pay over all fines and penalties collected by him in any criminal cause or proceeding he shall, on conviction thereof, be subject to a fine of not less than one hundred nor more than one thousand dollars and imprisonment for not less than three nor more than six months and shall be dismissed from office.

HISTORY: 1962 Code Section 43‑8; 1952 Code Section 43‑8; 1942 Code Section 3723; 1932 Code Sections 1547, 3723; Civ. C. ‘22 Section 2257; Cr. C. ‘22 Section 494; Civ. C. ‘12 Section 1407; Cr. C. ‘12 Section 567; Civ. C. ‘02 Section 999; Cr. C. ‘02 Section 410; G. S. 857, 858; R. S. 325, 896; 1871 (14) 655, 656; (15) 420; 1981 Act No. 167, Section 1.

CROSS REFERENCES

Power and duty of magistrate to set up schedule for payment of fine by indigent person, see Section 17‑25‑350.

Library References

Fines 20.

Westlaw Topic No. 174.

C.J.S. Fines Section 6.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Magistrates’ Courts; Pecuniary Interest of Magistrates in Litigation. 31 S.C. L. Rev. 36.

Attorney General’s Opinions

Discussion of whether fines imposed in magistrates court for violations of county ordinances may be retained entirely by the county. S.C. Op.Atty.Gen. (June 13, 2013) 2013 WL 3243062.

Any interest generated on bail bonds pertaining to a pending case in general sessions or magistrate’s court would appear to belong to the individual making the deposit; bail funds forfeited as fines would be transmitted to the county treasurer in magistrate’s court cases or to respective state and county officials in courts of general sessions. 1989 Op. Atty Gen, No. 89‑97, p 262.

Fines generated from criminal cases in magistrate’s court must be paid over to the county treasurer who is authorized to place such funds in interest‑bearing accounts. 1989 Op. Atty Gen, No. 89‑98, p 266.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

This section [former Code 1962 Section 43‑8] omits the element of intention to defraud, but is apparently not unconstitutional as violating the constitutional provision preventing imprisonment for debt except for fraud. State v. Moore (S.C. 1924) 128 S.C. 192, 122 S.E. 672.

2. In general

“Forthwith” may be construed as meaning reasonable time. Spartanburg County v. Mitchell (S.C. 1949) 214 S.C. 283, 52 S.E.2d 266.

Where action was instituted against magistrate for failure to pay over fines and penalties to the county treasurer and he answered that he was ill during this period and unable to do so and that the fines had been locked in jail as was the custom, this did not constitute a breach of statutory duty. Spartanburg County v. Mitchell (S.C. 1949) 214 S.C. 283, 52 S.E.2d 266.

**SECTION 22‑1‑80.** Books required and disposition thereof in case of death, resignation and the like.

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, showing the commencement, progress and termination thereof, as well as all fees charged or received by him. He shall also enter upon his book of criminal cases all warrants issued by him and what disposition he has made of them, what moneys have been collected from fines, costs and otherwise thereunder and what disposition he has made of them. He shall produce such books when required, for the inspection of the solicitor of the circuit. 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.

HISTORY: 1962 Code Section 43‑9; 1952 Code Section 43‑9; 1942 Code Section 3717; 1932 Code Section 3717; Civ. C. ‘22 Section 2251; Civ. C. ‘12 Section 1401; Civ. C. ‘02 Section 993; G. S. 853; R. S. 892; 1839 (11) 22; 1879 (17) 49; 1905 (24) 691.

Library References

Justices of the Peace 21.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 27.

Attorney General’s Opinions

A magistrate must be a resident of the county he or she serves at the time of appointment and such residency requirement continues during the term of the magistrate. 1994 Op. Atty Gen, No. 94‑6, p. 24.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v. Pearson (S.C. 1953) 223 S.C. 377, 76 S.E.2d 151.

Magistrate’s books are the best evidence of proceedings before him. State v. Rice (S.C. 1897) 49 S.C. 418, 27 S.E. 452, 61 Am.St.Rep. 816.

For additional related cases, see Caulfield v County of Charleston (1883) 19 SC 600. Barron v Dent (1882) 17 SC 75. Cherry v McCants (1875) 7 SC 224. Etters v. Etters (S.C. 1858) 11 Rich. 413.

**SECTION 22‑1‑90.** Monthly reports of moneys collected; treasurer’s record.

Every magistrate shall, on the first Wednesday in each month or within ten days thereafter, make to the auditor and treasurer of his county a full and accurate statement in writing of all moneys collected by him on account of fines, penalties or forfeitures during the past month together with the title of each case in which a fine has been paid. The county treasurer shall keep a record of the title of each case in which the fine has been paid, the nature of the offense for which the fine was imposed and the amount thereof. In default thereof the magistrate or treasurer, as the case may be, shall, on conviction, be liable to a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding two months or both, at the discretion of the court.

HISTORY: 1962 Code Section 43‑12; 1952 Code Section 43‑12; 1942 Code Section 3729; 1932 Code Sections 1546, 3729; Civ. C. ‘22 Section 2263; Cr. C. ‘22 Section 493; Civ. C. ‘12 Section 1408; Cr. C. ‘12 Section 566; Civ. C. ‘02 Section 1000; Cr. C. ‘02 Section 409; G. S. 802; R. S. 324, 897; 1878 (16) 753; 1901 (23) 742.

Library References

Justices of the Peace 21.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 27.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Spartanburg County v. Mitchell (S.C. 1949) 214 S.C. 283, 52 S.E.2d 266.

**SECTION 22‑1‑100.** Monthly report of criminal cases in counties with cities of 50,000 and over.

Each magistrate within a county containing a city of fifty thousand inhabitants or more shall make and file with the county governing body each month a verified report of criminal cases begun before him and their status and disposition, together with a list of all fines collected. The county shall not pay any salary to any magistrate until he has made and filed the verified report herein required and further, in default thereof, the magistrate violating the provisions of this section shall, on conviction, be liable to a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding two months, at the discretion of the court.

HISTORY: 1962 Code Section 43‑16; 1952 Code Section 43‑16; 1942 Code Section 3724; 1932 Code Sections 3724, 3725; Civ. C. ‘22 Sections 2258, 2259; Cr. C. ‘22 Section 498; 1917 (30) 111; 1972 (57) 2538.

Library References

Justices of the Peace 21.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 27.

**SECTION 22‑1‑110.** Submission of dockets to governing bodies of counties.

Each magistrate shall submit his dockets quarterly to the governing body of the county at its regular quarterly meetings and such governing body shall make reports annually, prior to the fall term of court, to the foreman of the grand jury as to such dockets and any irregularities shown thereby. Magistrates shall not be required to make reports or file transcripts of their dockets in any manner or at any time other than as herein prescribed.

HISTORY: 1962 Code Section 43‑18; 1952 Code Section 43‑18; 1942 Code Section 3730; 1932 Code Section 3730; Civ. C. ‘22 Section 2264; Civ. C. ‘12 Section 1409; Civ. C. ‘02 Section 1001; 1898 (22) 750.

Library References

Justices of the Peace 21.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 27.

**SECTION 22‑1‑120.** Exhibit of original papers required with bills of costs.

The governing bodies of the several counties of this State in auditing the accounts of magistrates shall require them to exhibit with the bill of costs all the original papers in each case in which the costs have accrued and no bill of costs against any county shall be allowed by the governing body of any county unless accompanied by the original papers in each case mentioned in the bill or account. The governing bodies after examining the original papers of any magistrate shall return them to him without delay.

HISTORY: 1962 Code Section 43‑19; 1952 Code Section 43‑19; 1942 Code Section 3719; 1932 Code Section 3719; Civ. C. ‘22 Section 2253; Civ. C. ‘12 Section 1403; Civ. C. ‘02 Section 995; G. S. 853; R. S. 893; 1875 (15) 863.

Library References

Justices of the Peace 21.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 27.

**SECTION 22‑1‑130.** Records of books delivered to magistrates by court clerks.

The clerks of the courts of the respective counties shall each keep a book in which shall be entered all books sent them for distribution among the magistrates of their respective counties, in which book shall also be written the receipt of the magistrate to whom any such books are delivered, to be cancelled upon return of such books by writing across the same “books returned.”

HISTORY: 1962 Code Section 43‑20; 1952 Code Section 43‑20; 1942 Code Section 3732; 1932 Code Section 3732; Civ. C. ‘22 Section 2266; Civ. C. ‘12 Section 1411; Civ. C. ‘02 Section 1003; G. S. 862; R. S. 899; 1882 (18) 872.

Library References

Clerks of Courts 69.

Westlaw Topic No. 79.

C.J.S. Courts Section 252.

**SECTION 22‑1‑140.** Return of books received by magistrate from court clerk at expiration of magistrate’s term.

Upon the expiration of the term of office of any magistrate he shall within thirty days return to the clerk of the court of his county in good condition all books received by him from the clerk under the law regulating the distribution of books among magistrates. Any magistrate neglecting or refusing to return such books to the clerk or pay for such books or any damage thereto shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in the sum of not less than ten dollars nor more than twenty‑five dollars or be imprisoned not less than ten days nor more than thirty days, at the discretion of the court. The fines imposed or money received under this section shall be paid over to the clerk of the court when collected, to be expended in replacing such books as are not returned or are too much damaged to be reissued and to be used for no other purpose.

HISTORY: 1962 Code Section 43‑21; 1952 Code Section 43‑21; 1942 Code Sections 3717‑1, 3732; 1932 Code Sections 1548, 3732; Civ. C. ‘22 Section 2266; Civ. C. ‘12 Section 1411; Civ. C. ‘02 Section 1003; Cr. C. ‘22 Section 495; Cr. C. ‘12 Section 568; Cr. C. ‘02 Section 411; G. S. 862; R. S. 326, 899; 1871 (15) 872; 1882 (17) 872.

Library References

Clerks of Courts 69.

Westlaw Topic No. 79.

C.J.S. Courts Section 252.

**SECTION 22‑1‑150.** Bond required of magistrates.

No person shall be commissioned, nor shall he continue to hold office or be qualified to discharge the duties and exercise the powers of magistrate, until he enters into and files, in the office of the clerk of court of the county in which he is to serve, bond to the State in a sum specified by the governing body of such county. The bond shall not be less than twenty‑five percent of the collections for the previous year reported to the county treasurer as required by Section 22‑1‑90; provided, however, that if collections for the previous year did not exceed a total of two thousand dollars, the county governing body in its discretion shall be authorized to waive any bond requirements for such magistrate. The bond shall be conditioned for the faithful performance and discharge of the duties of his office, with surety to be approved by the governing body of the county. The terms, form and execution shall be approved by the Attorney General. Any magistrate not in compliance with this section shall be subject to immediate removal from office until he shows good cause to the Supreme Court for not obtaining such bond. Premiums for the bonds shall be paid by the respective counties.

HISTORY: 1978 Act No. 568, Section 1.

CROSS REFERENCES

Bonds given by public officers generally, see Sections 8‑3‑30 et seq.

Library References

Justices of the Peace 5.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 14.

Attorney General’s Opinions

A magistrate not properly bonded could be considered as serving in a de facto capacity. 1992 Op. Atty Gen No 92‑62.

**SECTION 22‑1‑160.** Bond required of magistrates’ employees.

No person shall be employed by a magistrate when the duties of his employment consist of financial responsibilities, including receiving and having custody of moneys collected in behalf of the magistrate, until he shall have entered into and filed, in the office of the clerk of court of the county in which the person is employed, bond to the State in a sum of like amount as and if required of the magistrate by Section 22‑1‑150. The bond shall be conditioned for the faithful performance and discharge of the duties of the employee, with surety to be approved by the governing body of the county. The terms, form and execution shall be approved by the Attorney General. Failure to comply with this section shall subject the employee to removal from employment. Premiums for such bonds shall be paid by the respective counties.

HISTORY: 1978 Act No. 568, Section 2.

CROSS REFERENCES

Bonds given by public officers generally, see Sections 8‑3‑30 et seq.

Library References

Justices of the Peace 5.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 14.

**SECTION 22‑1‑170.** Attorney’s fees awards.

A magistrate may award attorney’s fees in the same manner as is provided by law for circuit judges in this State in civil matters.

HISTORY: 1988 Act No. 678, Part I, Section 3.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 84, Magistrates.