CHAPTER 8

Magistrates’ Compensation

**SECTION 22‑8‑10.** Definitions.

 As used in this chapter:

 (1) “Chief magistrate” means the magistrate in each county who is designated by the Chief Justice of the South Carolina Supreme Court as the chief magistrate for administrative purposes for the county which he serves.

 (2) “Full‑time magistrate” means a magistrate who regularly works forty hours a week performing official duties required of a magistrate as a judicial officer.

 (3) “Part‑time magistrate” means a magistrate who regularly works less than forty hours a week performing official duties required of a magistrate as a judicial officer.

HISTORY: 1988 Act No. 678, Part I, Section 7.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 14, Magistrates’ Courts.

**SECTION 22‑8‑20.** Judicial functions.

 Magistrates are judicial officers, and the hours they spend in the performance of their official duties are hours spent in the exercise of their judicial function. The exercise of the judicial function involves the examination of facts leading to findings, the application of law to those findings, and the ascertainment of the appropriate remedy. Time spent in the performance of judicial functions also includes time spent performing ministerial duties necessary for the exercise of the magistrates’ judicial powers, as well as necessary travel and training time. In the case of chief magistrates, the judicial function includes time necessary to perform the administrative and other duties required of a chief magistrate for administrative purposes. The classification or reclassification of magistrates as full time or part time must be made in consideration of these factors.

HISTORY: 1988 Act No. 678, Part I, Section 7.

Library References

Justices of the Peace 14, 20.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 26, 28 to 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 14, Magistrates’ Courts.

NOTES OF DECISIONS

In general 1

1. In general

A chief magistrate was entitled to pay as a full‑time magistrate where, although she was originally hired as a secretary and she was being paid for her full‑time secretarial duties, as chief magistrate she was scheduled to maintain office hours from 9:00 a.m. to 5:00 p.m. Monday through Friday, to be on call every week night, and to be on call every fourth weekend, and she was responsible for issuing search warrants, conducting bond hearings, setting fines, handling traffic tickets, maintaining records, filing reports with court administration, transmitting bonds and fines to appropriate authorities, and conducting correspondence. Ramsey v. County of McCormick (S.C. 1991) 306 S.C. 393, 412 S.E.2d 408.

**SECTION 22‑8‑30.** Facilities and personnel; compensation of constables.

 (A) Each county shall provide sufficient facilities and personnel for the necessary and proper operation of the magistrates’ courts in that county.

 (B) Other personnel determined to be necessary by the county for magistrates in a county must be provided by the governing body of the county and must be county employees and be paid by the county.

 (C) The compensation of constables may vary, and salaries and perquisites must be determined by the governing board of the county and funded by the county.

HISTORY: 1988 Act No. 678, Part I, Section 7.

Library References

Justices of the Peace 14.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 28 to 31.

**SECTION 22‑8‑40.** Full‑time and part‑time magistrates; salaries.

 (A) A county is not required to have a full‑time magistrate and may have only part‑time magistrates.

 (B) Each magistrate in this State must be paid as follows by the county which he serves:

 (1) The following salary schedule shall be used to determine a magistrate’ s annual compensation prior to the completion of his fourth year in office:

 (a) upon being appointed a magistrate, a magistrate shall be paid seventy‑ five percent of the base salary for his county’s population category as provided in item (2);

 (b) upon completing the requirements of Sections 22‑1‑10(C) and 22‑1‑16, a magistrate shall be paid eighty percent of the base salary for his county’s population category as provided in item (2);

 (c) upon the magistrate’s completion of his second year in office, a magistrate shall be paid eighty‑five percent of the lowest salary rate for his county’s population category as provided in item (2);

 (d) upon the magistrate’s completion of his third year in office, a magistrate shall be paid ninety percent of the lowest salary rate for his county’s population category as provided in item (2);

 (e) upon the magistrate’s completion of his fourth year in office, a magistrate shall be paid one hundred percent of the lowest salary rate for his county’s population category as provided in item (2).

 (2) There is established a base salary for each population category as follows:

 (a) for those counties with a population of one hundred fifty thousand and above, according to the latest official United States Decennial Census, the base salary is fifty‑five percent of a circuit judge’s salary for the state’s previous fiscal year;

 (b) for those counties with a population of at least fifty thousand but not more than one hundred forty‑nine thousand, nine hundred ninety‑nine, according to the latest official United States Decennial Census, the base salary is forty‑five percent of a circuit judge’s salary for the state’s previous fiscal year;

 (c) for those counties with a population of less than fifty thousand, according to the latest official United States Decennial Census, the base salary is thirty‑five percent of a circuit court judge’s salary for the state’s previous fiscal year.

 (3) The provisions of this subsection are effective July 1, 2000.

 (C) The number of magistrates shall be determined using the following factors:

 (1) There is established a ratio of one magistrate for every twenty‑eight thousand persons in each county of the State based on the latest official United States Decennial Census.

 (2) There is established a ratio of one magistrate for every one hundred fifty square miles of area in each county of the State as a factor to be used in determining the base salary as provided in this section.

 (3) Notwithstanding the provisions of subsection (D), the maximum number of magistrates in each county is the greater of that number determined by taking one magistrate for every twenty‑eight thousand persons in each county or that number determined by taking the average of the ratio of one magistrate for every twenty‑eight thousand persons in each county as provided by item (1) of this subsection and the ratio of one magistrate for every one hundred fifty square miles of area in each county as provided in item (2) of this subsection. However, no county is required to have fewer than the equivalent of one full‑time magistrate and one part‑time magistrate . If a fraction of a magistrate results, the county must round off the fraction, establishing an additional part‑time magistrate. No additional magistrates may be added until a county has less than the ratio.

 (D) In addition to the maximum number of magistrates prescribed in subsection (C), additional magistrates may be appointed as determined using the following formula:

 (1) for counties which collect accommodations tax revenues of five hundred thousand to nine hundred ninety‑nine thousand, nine hundred ninety‑nine dollars, one additional magistrate may be appointed;

 (2) for counties which collect accommodations tax revenues of one million to two million, nine hundred ninety‑nine thousand, nine hundred ninety‑nine dollars, two additional magistrates may be appointed;

 (3) for counties which collect accommodations tax revenues of three million to four million, nine hundred ninety‑nine thousand, nine hundred ninety‑nine dollars, three additional magistrates may be appointed; and

 (4) for counties which collect accommodations tax revenues of five million dollars and above, four additional magistrates may be appointed.

 (E) Part‑time magistrates are to be computed at a ratio of four part‑time magistrates equals one full‑time magistrate.

 (F) Part‑time magistrates are entitled to a proportionate percentage of the salary provided for full‑time magistrates. This percentage is computed by dividing by forty the number of hours a week the part‑time magistrate spends in the performance of his duties. The number of hours a week that a part‑time magistrate spends in the exercise of the judicial function, and scheduled to be spent on call, must be the average number of hours worked and is fixed by the county governing body upon the recommendation of the chief magistrate. However, a part‑time magistrate must not work more than forty hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate.

 (G) A full‑time chief magistrate must be paid a yearly supplement of three thousand dollars and reimbursed for travel expenses as provided by law while in the actual performance of his duties. A part‑time chief magistrate must be paid a yearly supplement of fifteen hundred dollars and reimbursed for travel expenses as provided by law while in the actual performance of his duties.

 (H) Magistrates in a county are entitled to the same perquisites as those employees of the county of similar position and salary.

 (I) A ministerial magistrate is entitled to the same compensation as a part‑time magistrate.

 (J) A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office, and must be paid the same percentage annual increase in salary as other magistrates. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

 (K) No county may pay a magistrate a salary lower than the base salary established for that county by the provisions of subsection (B) of this section.

 (L) Nothing in this section may be interpreted as prohibiting a county from paying a magistrate more than the salary established for that county or from paying a magistrate a merit raise in addition to the salary established for that county.

 (M) The South Carolina Court Administration shall monitor compliance with this section. Nothing contained in this section may be construed as prohibiting a county from paying salaries in excess of the minimum salaries provided for in this section.

 (N) For purposes of the salary phase‑in provided in subsection (B)(1) of this section, a magistrate with prior service as a magistrate who after a break in service is again appointed magistrate, is allowed credit for the prior service.

HISTORY: 1988 Act No. 678, Part I, Section 7; 2000 Act No. 226, Section 14; 2000 Act No. 387, Part II, Section 94, eff July 1, 2000; 2000 Act No. 409, Section 2.

Library References

Justices of the Peace 14.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 28 to 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 14, Magistrates’ Courts.

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.

Salary base increases for Aiken County magistrates would be effective from the date when the United States Decennial Census data was received in the state and became official, and the salary base increases would be prospective. S.C. Op.Atty.Gen. (June 10, 2011) 2011 WL 2648715.

Under ratio formula, Chesterfield County is entitled to 3.5 full‑time equivalent magistrates, and where only 8 part‑time magistrates currently served, county is entitled to equivalent of one and one‑half full‑time magistrates additionally. 1992 Op. Atty Gen No 92‑17.

City Council determined actual number of magisterial positions, in accordance with designation of full‑time/part‑time status, which are eligible for appointment. 1992 Op. Atty Gen No 92‑17.

Determination of whether magistrate is full‑time or part‑time is based solely upon number of hours worked, and if number of hours worked is less than 40, individuals should be considered part‑time magistrate. 1992 Op. Atty Gen No 92‑17.

Part‑time magistrates are to be computed at ratio of four part‑time magistrates equals one full‑time position. 1992 Op. Atty Gen No 92‑17.

County Council is without authority to freeze funding for magisterial positions duly appointed. 1991 Op. Atty Gen, No. 91‑26 p 78.

A magistrate or probate judge who fails to meet the eligibility requirements but continues to serve under “grandfather” provisions would not be eligible to be reappointed or reelected should he cease to hold the office prior to being reelected or reappointed. 1989 Op. Atty Gen, No. 89‑13, p 36.

Part‑time magistrates may be assigned work weeks of any length less than 40 hours per week by counties and their compensation is to be dictated by the number of hours assigned; a magistrate who replaces another magistrate is only entitled to start at the base pay rate established in his county, not the equivalent pay of his predecessor. 1989 Op. Atty Gen, No. 89‑13, p 36.

In light of the provisions of Section 22‑8‑40 of the Code, there is basis for not permitting a part‑time magistrate to accept less than the base salary established for that position. 1989 Op. Atty Gen, No. 89‑136, p 365.

NOTES OF DECISIONS

In general 1

Constitutional issues 3

Number of magistrates 2

1. In general

County was not statutorily precluded from reducing salary of full‑time county magistrate who was also assigned to serve as municipal judge for city, where city terminated agreement under which county was to provide city with magistrate, prior to the reduction, magistrate received two salaries from two jobs encompassed by one paycheck, and statute prohibiting reduction of a magistrate salary did not prevent county from eliminating additional payment for job magistrate no longer performed. Graves v. County of Marion (S.C. 2001) 346 S.C. 472, 552 S.E.2d 709, rehearing denied. Justices Of The Peace 15

A part‑time magistrate was entitled to compensation for hours spent “on call” since Section 22‑8‑40(D) of the Magistrate’s Pay Act provides that a part time magistrate’s pay shall be based on the number of hours a week the magistrate spends in the exercise of judicial function “and scheduled to be spent on call,” even though the words “on call” are omitted from the definitions of “part time magistrate” and “judicial functions.” Ramsey v. County of McCormick (S.C. 1991) 306 S.C. 393, 412 S.E.2d 408.

2. Number of magistrates

Section 22‑8‑40(B) cannot be construed to mean that the Legislature delegated to counties the determination of the number of magistrates it wished to fund in its county; such an interpretation would permit the county to eliminate all the magisterial positions in its county and effectively abolish the magistrate court system there. Davis v. County of Greenville (S.C. 1996) 322 S.C. 73, 470 S.E.2d 94, rehearing denied.

The formula for calculating the appropriate number of magistrates in a county is either 1 magistrate per 28,000 persons or the averages of 1 per 28,000 persons and 1 per 150 square miles, whichever is higher. Davis v. County of Greenville (S.C. 1996) 322 S.C. 73, 470 S.E.2d 94, rehearing denied.

3. 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 22‑8‑50.** Redress of classification, reclassification or compensation actions by county governing body.

 (A) A magistrate aggrieved by a ruling or action taken by a county or the governing body of the county concerning classification, reclassification, or compensation of magistrates based upon this chapter, or with respect to the operation of the magistrates’ court system within the county, may petition the county governing body, in writing, for redress.

 (B) The county governing body of each county shall hear and determine contested cases arising within the county in connection with classification, reclassification, and compensation of magistrates, or with respect to the operation of the magistrates’ court system within its county, in accordance with the provisions of Article 3, Chapter 23 of Title 1, and subject to judicial review as provided in Section 1‑23‑380.

HISTORY: 1988 Act No. 678, Part I, Section 7.

Library References

Justices of the Peace 14.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 28 to 31.

RESEARCH REFERENCES

Encyclopedias

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