

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DECISION OF
NEWBERRY COUNTY COUNCIL

Court of Appeals Docket No. 2016-000305

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SC Court of Appeals

Arthur L. Jayroe, Jr. Appellant,

v.

Newberry County Respondent.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	4
FACTS.....	5
ARGUMENT	11
I. The Council Decision Stands on its own as sufficient under S.C. Code Ann. § 1-23-380.....	11
II. The Magistrate's Pay Act does not entitle Jayroe to compensation for hours spent in non-magisterial personal or professional pursuits while available for call.	11
A. The clear meaning of the statute, both from text and structure, refutes Jayroe's claim.	13
III. Jayroe's alternative argument, that he should be compensated as a full-time magistrate, is without foundation in the statute or case law.	16
IV. Changing from a fixed \$4,500 annual supplement to a time-recorded-and- paid system for extra-hours duties was not a reduction in salary prohibited by S.C. Code Ann. § 22-8-40(J)	17
V. The County has timely paid all amounts that it owes Jayroe, and there has thus been no violation of the Payment of Wages Act	19
CONCLUSION	21

TABLE OF AUTHORITIES

CASES

<i>Baugh v. Columbia Heart Clinic, P.A.</i> , 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013)	4
<i>Carolina Alliance for Fair Employment v. S.C. Dept. of Labor, Licensing, and Regulation</i> , 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999)	14
<i>Friends of Earth v. Pub. Serv. Comm'n of S. Carolina</i> , 387 S.C. 360, 692 S.E.2d 910 (2010)	4
<i>Futch v. McAllister Towing of Georgetown, Inc.</i> , 335 S.C. 598, 518 S.E.2d 591 (1999)	20
<i>Goodwyn v. Shadowstone Media Inc.</i> , 408 S.C. 93, 757 S.E.2d 560 (Ct. App. 2014)	4
<i>Jayroe v. Newberry Cty.</i> , 413 S.C. 176, 775 S.E.2d 382 (2015)	2, 5
<i>Multi-Cinema, Ltd. v. South Carolina Tax Comm.</i> , 292 S.C. 411, 357 S.E.2d 6 (1987)	14
<i>Ramsey v. County of McCormick</i> , 306 S.C. 393, 412 S.E.2d 408 (1991)	15, 16
<i>Rice v. Multimedia, Inc.</i> , 318 S.C. 95, 456 S.E.2d 381 (1995)	20
<i>S. Carolina Dep't of Revenue v. Blue Moon of Newberry, Inc.</i> , 397 S.C. 256, 725 S.E.2d 480 (2012)	4
<i>Santee Cooper Resort, Inc. v. South Carolina Public Serv. Comm'n</i> , 298 S.C. 179, 379 S.E.2d 119 (1989)	14

STATUTES

S.C. Code Ann. § 1-23-380	2, 4, 5, 11
S.C. Code Ann. § 22-8-10	2, 5, 13, 16
S.C. Code Ann. § 22-8-40(F)	1, 6, 13, 15, 16, 18
S.C. Code Ann. § 22-8-40(G)	7
S.C. Code Ann. § 22-8-40(J)	1, 17
S.C. Code Ann. § 22-8-40(M)	15
S.C. Code Ann. § 22-8-50(A)	2, 4
S.C. Code Ann. § 22-8-50(B)	2, 4
S.C. Code Ann. § 41-10-10	2
S.C. Code Ann. § 41-10-30	19
S.C. Code Ann. § 41-10-40	19
S.C. Code Ann. § 41-10-50	19

S.C. Code Ann. § 41-10-60..... 19

S.C. Code Ann. § 41-10-80(C) 1, 2, 4

Act No. 678, 1988 S.C. Acts 6239..... 14

MISCELLANEOUS

Webster’s Ninth New Collegiate Dictionary (Merriam-Webster, Inc.; 1987) 14

STATEMENT OF ISSUES ON APPEAL

1. Did Newberry County Council err in determining that:
 - (a) Arthur Jayroe is not entitled to additional compensation beyond that already paid based on S.C. Code Ann. § 22-8-40(F) for nighttime and weekend on-call hours during extended, uninterrupted periods in which he was not called;
 - (b) Newberry County's September 2014 change in its method of compensating magistrate time beyond scheduled hours from a fixed annual \$4,500 compensation supplement to a system that tracks and compensates hours actually spent performing magistrate duties did not violate S.C. Code Ann. § 22-8-40(J); and
 - (c) Jayroe is not entitled to treble damages or attorney's fees under S.C. Code Ann. § 41-10-80(C) in this case?

STATEMENT OF THE CASE

South Carolina magistrates are compensated by the county they serve pursuant to the Magistrates' Compensation Act, S.C. Code Ann. § 22-8-10 *et seq.* (2007). Magistrates must seek redress from the county council under S.C. Code Ann. § 22-8-50(A) (2007) if they believe they have not been compensated correctly. S.C. Code Ann. § 22-8-50(B) (2007) directs that an appeal from a county council decision is to the South Carolina Court of Appeals under S.C. Code Ann. § 1-23-380 (Supp. 2015). This appeal is from such a contested case decision of Newberry County Council ("**Council**").

On March 11, 2015, appellant Arthur L. Jayroe ("**Jayroe**"), then chief magistrate of Newberry County (the "**County**"), filed a petition with Council for redress concerning his compensation for the preceding three years and continuing.¹ His tenure, and thus the period of his claim, ended on June 9, 2015.² He asserted claims under the Magistrates' Compensation Act and the Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.* (Supp. 2015).

Jayroe alleges that the County failed to pay him for time during which he was on-call but not actually performing any magisterial duties and during which he was free to engage in personal pursuits. In particular, Jayroe claims that he was on-call during weeknights for a total of approximately 10,500 to 12,000 hours over a three-year period. Jayroe calculated the amount owed in two ways. The first is his claimed hourly pay rate of \$26.85, times 11,392.5 hours, trebled (in reliance on S.C. Code Ann. § 41-10-80(C)

¹ The three-year statute of limitations for wage payment claims, S.C. Code Ann. § 41-10-80(C) (Supp. 2015), therefore begins the eligible claim period at March 11, 2012.

² The circumstances in which Jayroe was not re-appointed and his term of office expired were the subject of *Jayroe v. Newberry Cty.*, 413 S.C. 176, 775 S.E.2d 382 (2015).

(Supp. 2015)). This method of calculation generates a claim number of \$887,370. The second method was the difference between his part-time pay and the pay due to a full-time chief magistrate, also trebled. This second method generates a claim for back compensation of \$371,883.³ He also alleges that the County unlawfully reduced his salary beginning in September 2014, by changing from an annual fixed amount for on-call services (\$4,500) to a payment plan by which hours actually spent out on-call performing magisterial duties were recorded and compensated. Finally, Jayroe claims attorney's fees (also in reliance on S.C. Code Ann. § 41-10-80(C)), in the amount of \$18,731.09.

On October 27, 2015, Council heard evidence and argument from Jayroe and from the County. Council was advised during that process by separate legal counsel, David Dubberly, who is certified by the South Carolina Supreme Court as a Specialist in Employment and Labor Law. On February 3, 2016, Council issued its decision (the "**Council Decision**," R. 0017) that Jayroe is not due any additional compensation from the County and is not entitled to attorney's fees.

On February 18, 2016, Jayroe noticed this appeal from the Council Decision.

³ In his brief, Jayroe has limited his claim to the smaller of these numbers, \$371,883. (Jayroe Brief at Conclusion).

STANDARD OF REVIEW

This contested case arises under S.C. Code Ann. § 22-8-50(A) (2007); and this appeal, pursuant to S.C. Code Ann. § 22-8-50(B), is governed by S.C. Code Ann. § 1-23-380 (Supp. 2015), which establishes the standard of review as follows:

- (4) The review must be conducted by the court and must be confined to the record. . . .
- (5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
 - (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the agency;
 - (c) made upon unlawful procedure;
 - (d) affected by other error of law;
 - (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

“Substantial evidence” is evidence that, considering the record as a whole, would allow reasonable minds to reach the same conclusion as Council. *Friends of Earth v. Pub. Serv. Comm’n of S. Carolina*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). Questions of law are reviewed *de novo*. *S. Carolina Dep’t of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012).

With respect to the issues of trebling of damages and claimed attorney’s fees under S.C. Code Ann. § 41-10-80(C) (Supp. 2015), such awards are discretionary and the appellate court may take its own view of the facts. *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013); *Goodwyn v. Shadowstone Media Inc.*, 408 S.C. 93, 757 S.E.2d 560 (Ct. App. 2014).

FACTS

Jayroe has not alleged that any fact found by Council is not supported by substantial evidence in the record. Thus, Council's Findings of Fact are established. S.C. Code Ann. § 1-23-380 (5)(e). Certain facts are recited here to provide relevant background for the subsequent discussion and application of relevant law.

1. Jayroe is a certified public accountant ("CPA"). He has maintained an active accounting practice in Little Mountain, South Carolina since 1984. (Council Decision at 3, ¶ 4, R. 0019). His firm has other accountants on staff but he is the only CPA. (Tr. 16: 1-5, R. 0046).

2. Jayroe served as a part-time magistrate in Newberry County from 1995 until 2015. He served as Associate Chief Magistrate from 2000 until 2005, and as Chief Magistrate from 2005 until 2015. (Council Decision at 3, ¶ 2, R. 0019). He was appointed as Associate Chief Magistrate and as Chief Magistrate semi-annually by the Chief Justice of the Supreme Court of South Carolina pursuant to S.C. Code Ann. § 22-8-10(1) (2007). (Jayroe Ex's. 4 and 5, R. 0180 and R. 0185; Tr. 19:12-24, R. 0049).

3. During the relevant period, he was one of three part-time magistrates in the County; there were also two full-time magistrates. (County Ex. 9, R. 0271; *see Jayroe*, 413 S.C. at 178, 775 S.E. 2d at 383). From July 1, 2012 through May 31, 2013, there was a vacancy in one part-time magistrate's position. (Jayroe Ex's. 9 and 10, R. 0271 and R. 0275).

4. Upon becoming Chief Magistrate in 2005, Jayroe set the after-hours on-call schedule for magistrates in the County. By order of the Chief Justice of the South Carolina Supreme Court, it was the Chief Magistrate's responsibility to "Establish with

the other magistrates of the county, a schedule so arranged that a magistrate will be available, in person or on-call, in the county to issue warrants and conduct bail proceedings.” (Council Decision at 3, ¶ 4, R. 0019).

5. The number of hours to be worked by a part-time magistrate in a county is set by the county council upon recommendation of the chief magistrate. S.C. Code Ann. § 22-8-40(F) (2007). A part-time magistrate must not work more than 40 hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate. *Id.* Despite the statutory role of the chief magistrate in setting hours, Jayroe testified, regarding setting himself as the sole weeknight on-call magistrate and the potential cost to the County: “Again, I don’t inform council. I respond to what council directs me to do, and I did that.” (Tr. 115: 13 – 116: 3, R. 0125-0126).

6. As a magistrate, Jayroe held office hours at his accounting firm for six hours per week (three hours two days per week). (Council Decision at 3, ¶ 3, R. 0019). During the period of the 2012-2013 vacancy, Jayroe was scheduled for an additional four office hours per week, for a total of ten office hours per week during those 11 months. (County Ex. 9, R. 0271. County Ex. 9 is Jayroe’s annual report as the County’s Chief Magistrate to South Carolina Court Administration of hours and compensation for magistrates in the County.)

7. For his scheduled office hours, Jayroe was compensated at an hourly rate determined in accordance with S.C. Code Ann. § 22-8-40(F).⁴

8. In addition to those office hours, Jayroe had on-call duties. (Council Decision at 3, ¶ 3, R. 0019).

⁴ Compensation for office hours is not at issue in this appeal. (County Ex. 9, R. 0271).

9. Prior to September 2014, part-time magistrates in the County (including Jayroe) were paid for additional unscheduled time (four hours per week for Jayroe; three or four hours per week for other part-time magistrates). This compensation for unscheduled time was intended to compensate for duties performed while on weekend call; and it was paid regardless of whether the recipient actually was called out for service beyond regularly scheduled hours during a weekend. (County Ex. 9, R. 0271; Tr. 18: 3-24, R. 0048; Tr. 50: 21 – 51: 14, R. 0080-0081). Each of the magistrates, both full and part-time, including Jayroe, took part in the weekend rotation, so that on average each magistrate covered one weekend out of every five. (County Ex. 10, R. 0275; Jayroe Ex. 15, R. 0209; Tr. 29: 22 – 30: 9, R. 0059-0060; Tr. 57:23 – 58:7, R. 0087-0080).

10. During the period of the 2012-2013 vacancy, Jayroe received compensation for an additional four hours per week of unscheduled time, for a total of eight unscheduled but compensated hours per week during that period. (County Ex. 9, R. 0271). However, despite receiving compensation for the additional unscheduled time of the missing fifth magistrate during that period, Jayroe did not schedule himself for an additional weekend of rotation. Instead, the rotation was accelerated to once every four weeks for all magistrates for that period. (County Ex. 10, R. 0275 (schedules for July 2012 through May 2013)).

11. Starting in July 2005, Jayroe began receiving an additional \$1,500 part-time Chief Magistrate supplement in accordance with the Magistrates' Compensation Act, S.C. Code Ann. § 22-8-40(G), as the statutory compensation for his administrative duties as Chief Magistrate. (Council Decision at 4, ¶ 6, R. 0020).

12. In 1995, Council had voted to pay a stipend of \$4,500 to compensate for magistrate weeknight on-call duties regardless of the number of on-call hours worked. The stipend continued to be paid until 2014. Per meeting minutes from 1995, the stipend was to be “split . . . between Chief Magistrate and Assistant Magistrate.”⁵ (Council Decision at 3-4, ¶ 5, R. 0019).

13. When he became Chief Magistrate, Jayroe directed that the \$4,500 on-call stipend be shared between himself and another magistrate.⁶ Starting in December 2005, Jayroe assigned himself all weeknight on-call hours for 49 to 50 weeks of the year and he directed that the entire \$4,500 stipend be paid to himself, which continued until the stipend was discontinued. (Council Decision at 4, ¶ 6, 8, R. 0020). Jayroe was paid the \$4,500 annual amount regardless of whether he actually was called out for service beyond regularly scheduled hours during any pay period. (Tr. 108:4-12 R. 0118).

14. Jayroe testified that he was on-call for 3,500 to 4,000 hours per year or about 77.5 hours per week (every hour between midnight on Sunday night and midnight on Friday night outside of normal business hours). While on-call, he was somewhat restricted in terms of travel and conduct, but he was generally free to live his life without interruption. Only rarely was it necessary for him to perform magisterial duties while on-call. (Council Decision at 4, ¶ 6, R. 0020).

⁵ There was no “Assistant Magistrate” in the County, but there was, from time to time, an Associate Chief Magistrate, and there were other magistrates who assisted with weeknight on-call duties.) (Council Decision at 3-4, ¶ 5, R. 0019-0020).

⁶ The six-month sharing arrangement was with the former Chief Magistrate who had previously received the stipend and continued for the final six-months of his term as a magistrate. (Tr. 99: 25 - 102: 1, R. 0114-0117; Jayroe Ex’s. 6 and 7, R. 0190 and R. 0191).

15. Jayroe testified that he was actually called out “not all that often,” and that he could perform work for his CPA firm or sleep or drive to Harbison while remaining available for call. (Tr. 33:2 – 34: 9, R. 0063-0064; Tr. 116: 4 – 118: 18, R. 0126-0128). The only restriction on his activity was that he had to be able to reach his Little Mountain office within an hour from receiving a call, and could not engage in activities that would prevent him from being able to function once he arrived there. (Tr. 33: 21 – 34:13, R. 0063-0064). Although Jayroe testified that he did not believe that he should be compensated for time sleeping and that he “never said he worked” all the time he was on call (77.5 hours per week), his calculation of his claim did not exclude any time. (Jayroe Ex. 19, R 0248; County Ex. 12, R. 0323; Tr. 113:4 – 120:7, R. 0123-0130).

16. Effective in September 2014, the County replaced the \$4,500 stipend with a plan to pay for on-call hours actually worked by each part-time magistrate. The reason for the change was the County’s concern that a recent decision involving the compensation of another magistrate could lead to disputed claims about how part-time magistrates were being compensated for on-call time and how many hours a week they were working. (Tr. 138: 8 – 139:9, R. 0141-0142). Prior to this time, County magistrates did not keep track of on-call hours worked so the County could not determine how much time magistrates were working during the on-call period. (Tr. 138: 21 - 139: 1, R. 0141-0142).

17. Jayroe declined to record or submit information related to time spent performing duties outside of scheduled office hours. (Tr. 52: 11-13, R. 0082). The other part-time magistrates complied and were paid for their time spent performing duties outside of scheduled office hours. (County Ex. 8, R. 0270)

18. The compensated-but-unscheduled four hours per week were not diminished or affected for Jayroe or any other part-time magistrate. (Tr. 50: 14-20, R. 0080; 55: 7-23, R. 0085). Jayroe testified that he considered requiring increased office hours from the other part-time magistrates in order to off-set the additional compensation they would receive for hours actually worked while on-call. (Tr. 123: 19 – 124: 7, R. 0133-0134).

19. In transitioning to the new plan, the County offered payments to its part-time magistrates, including Jayroe, to compensate for any on-call hours actually worked during the prior three years. (Council Decision at 4, ¶ 8, R. 0020). At the same time that it unveiled the prospective on-call payment plan, the County offered each part-time magistrate, including Jayroe, additional compensation at their regular rate of pay, for 200 hours per year of service over the preceding three years, in order to resolve any potential disputed claims over service prior to the date of the offer. (Tr. 141: 1 - 146: 19, R. 0144-0149). The County believed 200 hours a year to be a generous estimation of the time that part-time magistrates spent working while on-call. (Tr. 142: 5 – 144: 9, R. 0145-0147). For Jayroe, the offer was offset by the \$4,500 stipend he had already received each year for on-call services. This amount was not offset for the other part-time magistrates because they did not receive any of the stipend. (Tr. 143: 12 – 144: 4, R. 0146-0147).

20. In exchange for the additional compensation, the County asked the part-time magistrates to sign a release to allow the County to control its costs and risk and limit the magistrates' ability to bring disputed claims for prior service. (Tr. 140: 5 - 151: 4, R. 0143-0154). The other part-time magistrates accepted the offer and signed releases.

Jayroe, however, did not accept the offer and did not sign a release. Tr. 144: 18 – 145: 1, R. 0147-0148).

21. After Jayroe's appointment expired, the County paid him the additional compensation it had previously offered him for pre-September 2014 on-call service, even though he did not execute a release. (Tr. 152: 2-6, R. 0155; Jayroe Ex. 17, R. 0231).

ARGUMENT

I. THE COUNCIL DECISION STANDS ON ITS OWN AS SUFFICIENT UNDER S.C. CODE ANN. § 1-23-380.

The Findings of Fact and Conclusions of Law in the Council Decision are sufficiently supported therein, and the County incorporates the Council Decision in full within this Brief.

II. THE MAGISTRATE'S PAY ACT DOES NOT ENTITLE JAYROE TO COMPENSATION FOR HOURS SPENT IN NON-MAGISTERIAL PERSONAL OR PROFESSIONAL PURSUITS WHILE AVAILABLE FOR CALL.

The central issue in this case arises from a single, erroneous contention of the appellant:

Jayroe is required to be compensated for on-call time, not merely for tasks actually performed during those required call periods. . . . [P]art-time magistrates are required to be compensated for the time "scheduled to be spent on-call," as opposed to only for time actually worked while on-call.

(Jayroe Brief at "Argument," I(A)). This grasping contention, once made concrete in light of the facts established above, is completely untenable.

Jayroe received annual compensation of \$19,489. (County Ex. 9, R. 0271). Of that, \$4,500 was the County supplement for weeknight on-call duties, and \$1,500 was the statutory part-time chief magistrate supplement. Thus, his base compensation was \$13,489, which reflects payment for 10 hours per week (520 hours per year) or \$25.94

per hour. However, he had only 6 hours per week (312 hours per year). Therefore, he was paid \$8,093.28 for office time and \$1,500 for the extra duties assigned to a chief magistrate. The remainder of his annual compensation of \$11,395.72 (\$4,500, plus 208 compensated but unscheduled non-office hours times \$25.94) was to compensate him for limiting his weeknight time and one-out-of-five weekends (except for two or three weeks vacation each year, which were completely unlimited) to dining, working at his CPA practice, sleeping, traveling anywhere within about a 40 mile radius of Little Mountain (about a 5,000 square-mile area), or engaging in any other hobby, family activity or personal pursuit – at worst, a mild inconvenience. By his own testimony, very little of that time was actually spent performing magisterial duties.

Jayroe testified that he was called out “not all that often” and that responding took between half an hour and 5 hours. (Tr. 32: 6 – 33: 18, R. 0062-0063). He also testified that he was on-call for 49 or 50 weeks a year (Tr. 28: 19-21, R. 0058). On the assumption of his being called out once every two weeks for 50 weeks in a year (25 calls), for three hours each call, that is 75 hours per year. At that level, Jayroe was being paid for on-call work at a rate of \$151.94 per hour (\$11,395.72 divided by 75 hours). In light of that rate, it is difficult to comprehend how he was “under”-compensated.

Nevertheless, Jayroe contends (in the lower of his alternative claim calculations) that he should be paid as a full-time magistrate: \$25.94 times 37.5 hours times 52 weeks, or \$50,583 per year (base, not including the additional \$3,000 full-time chief magistrate supplement). That is \$42,489.72 more than the value of his 6 hours of office time. At that level, his compensation for 75 hours per year of actual called-out time would be \$566.53 per hour. (His other, higher alternative claim calculation would be drastically higher,

even than that.) And then, of course, he wants that trebled. This is an absurd result that is inconsistent with the larger statutory scheme and could not have been intended by the legislature.

A. *The clear meaning of the statute, both from text and structure, refutes Jayroe's claim.*

Jayroe relies upon one phrase from one sentence in one sub-section of the Magistrates' Compensation Act, S.C. Code Ann. § 22-8-10 *et seq.* (2007). That sub-section, which derives the compensation of part-time magistrates from the compensation for full-time magistrates in the same county, is S.C. Code Ann. § 22-8-10(F). It reads as follows:

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.

The Act defines a full-time magistrate as one “who regularly works forty hours a week performing official duties” and a part-time magistrate as one “who regularly works less than forty hours a week performing official duties.” S.C. Code Ann. § 22-8-10(2) & (3).

The statute's language and structure thus focus on time actually spent working as a magistrate. The definitions of “full-time magistrate” and “part-time magistrate” both depend on “working,” that is, “performing official duties,” for a particular amount of time. S.C. Code Ann. § 22-8-10(2) & (3). “Working” and “performing” do not encompass merely being available for work in the unlikely and infrequent event of being needed. Moreover, compensation for a part-time magistrate depends on the amount of

time that he “spends in the performance of his duties.” S.C. Code Ann. § 22-8-40(F). Even the phrase in the next sentence that Jayroe relies upon does not refer to “time scheduled to be on-call;” rather, it refers to “time scheduled to be spent on-call.” “Spend” and “spent” both refer to using up some commodity – here, time.⁷ But time on-call, by Jayroe’s own testimony, was not used up by being on-call; rather, it remained available for a whole host of other personal activities in a wide range of other locations unrelated to his magisterial duties. The fact that “spent” is an operative word here is further confirmed by the fact that the “time spent scheduled to be on-call” is (still in the same sentence) a component of “the average number of hours worked.”

“A court’s primary function in interpreting a statute is to ascertain the intent of the legislature.” *Multi-Cinema, Ltd. v. South Carolina Tax Comm.*, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987). “The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Id.* Further “a statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Carolina Alliance for Fair Employment v. S.C. Dept. of Labor, Licensing, and Regulation*, 337 S.C. 476, 490, 523 S.E.2d 795, 802 (Ct. App. 1999). An interpretation that “torture[s] the meaning of the statute” is not acceptable. *Santee Cooper Resort, Inc. v. South Carolina Public Serv. Comm’n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989).

⁷ “Spend” is defined (first definition) as “to use up or pay out: EXPEND.” “Spent” is defined (first definition) as “used up: CONSUMED.” *Webster’s Ninth New Collegiate Dictionary* (Merriam-Webster, Inc.; 1987). The Magistrates Compensation Act, including the language at issue here, was adopted in 1988. Act No. 678, 1988 S.C. Acts 6239, Part I, § 7.

This statutory regime provides that part-time magistrates are compensated in an amount proportionate to the hours they work, but such hours must be less than 40 per week. S.C. Code Ann. § 22-8-40(F). A chief magistrate is to recommend the hours for each part-time magistrate in an amount less than 40 hours per week. Yet, Jayroe assigned to himself weeknight on-call duty for every night of every week, resulting in his allegedly being on-call for 77 hours a week (plus 48 hours once out of every five weekends). A part-time magistrate with such a schedule is certainly not envisioned by the statute; nor is a part-time magistrate becoming entitled to more than twice the compensation of a full-time magistrate. The avoidance of such absurdities would appear to be why the General Assembly has required South Carolina Court Administration to monitor the hours of each part-time magistrate. S.C. Code Ann. § 22-8-40(M) (2007). Perhaps it is also why Jayroe's annual mandatory reports to South Carolina Court Administration never reflected anything even approaching 40 hours a week for himself. (County Ex. 9, R. 0271). Clearly, Jayroe himself did not believe he was "working" as a magistrate during those hours.

The \$4,500 was more than adequate compensation for the time Jayroe actually spent working while on-call.

Ramsey v. County of McCormick, 306 S.C. 393, 412 S.E.2d 408 (1991) provides no support for Jayroe's ill-founded and extreme contention that he must be compensated at full rate for all scheduled on-call time, regardless of where he was or what he was doing. While *Ramsey* holds that part-time magistrates scheduled to be on-call every fourth weekend are to receive some compensation, it does not address the amount or calculation of that compensation. *Ramsey*, 306 S.C. at 396-397, 412 S.E.2d at 410.

Nothing in *Ramsey*, however, suggests that a part-time magistrate like Jayroe who assigned himself on-call duties every weeknight for a total of 3,500 to 4,000 hours per year should be compensated for such hours.

III. JAYROE’S ALTERNATIVE ARGUMENT, THAT HE SHOULD BE COMPENSATED AS A FULL-TIME MAGISTRATE, IS WITHOUT FOUNDATION IN THE STATUTE OR CASE LAW.

Jayroe has also argued, in the alternative, that even though he was a part-time magistrate and only kept six office hours per week, he should be treated for compensation purposes as a full-time magistrate given the many hours he scheduled himself to be on-call. (Tr. 70:11-19, R. 0100).⁸

There is, first, no statutory basis for this argument. Jayroe was nominated, confirmed, and invested as a part-time magistrate. The statute draws a clear distinction between a part-time magistrate and a full-time magistrate, and in their compensation. S.C. Code Ann. § 22-8-10(2) & (3); § 22-8-40(F) (2007). Jayroe, however, again claims the *Ramsey* decision supports his argument. In *Ramsey*, the Supreme Court was confronted with an apparent subterfuge by which a part-time magistrate was required to hold office hours for 40 hours a week, from 9:00 a.m. to 5:00 p.m. every weekday, under the guise that she was, during most of that time, engaged in support staff functions for the other magistrates as her full-time job. The Court, however, considered those functions to be properly viewed as judicial administrative functions and held that Ramsey was “in substance” a full-time magistrate, entitled to be paid accordingly. *Ramsey*, 306 S.C. at 397, 412 S.E.2d at 411. As previously discussed, Jayroe held office hours for only six

⁸ This alternative argument appears to be offered as a theory to calculate his damages only. The damages chart that Jayroe introduced into evidence calculates his damages as if he were entitled to receive a full-time magistrate’s salary. (Jayroe Ex. 19, R. 0248; Tr. 68:23 – 74:3, R. 0098-0104.)

hours per week and was otherwise engaged in an active CPA practice. His on-call hours required very little in the way of actual time commitment or disruption to his other personal or professional activities. There is no testimony indicating he was performing magisterial functions for anywhere approaching 40 hours per week. Thus, *Ramsey* is not analogous to the instant case; and it would be improper, and is certainly not required or even contemplated by *Ramsey*, to compensate him as a full-time magistrate.

IV. CHANGING FROM A FIXED \$4,500 ANNUAL SUPPLEMENT TO A TIME-RECORDED-AND-PAID SYSTEM FOR EXTRA-HOURS DUTIES WAS NOT A REDUCTION IN SALARY PROHIBITED BY S.C. CODE ANN. § 22-8-40(J).

S.C. Code Ann. § 22-8-40(J) (2007) provides:

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.

This sub-section prohibits a salary reduction for a magistrate “who is receiving a salary greater than provided for his position.” Jayroe, however, testified, both in his deposition testimony and at the hearing, that he **did not** receive a salary greater than provided for in the statute. (*See* Tr. 91:6 – 93:8, R. 0111-0113). Consequently, he has conceded that this sub-section does not apply to him, and he cannot recover under it.

Even assuming *arguendo* that Jayroe was receiving a salary greater than that provided in the statute, the stipend was not a part of his “salary” as that term is used in the statute – therefore, discontinuation of the stipend was not a salary reduction. Again by his own testimony, this stipend was not part of Jayroe’s salary. *Id.*⁹ Further, the extensive

⁹ Jayroe referred to the payment as a “stipend” in his petition and in his communications directing how the payment was to be applied. (Petition, ¶ 2 at 1, R. 0027; Jayroe Ex’s. 6 and 7, R. 0190 and R. 0191). In his testimony, he referred to the

discussion in S.C. Code Ann. § 22-8-40(J) of how a magistrate's salary is calculated makes no mention of any stipend or additional monies that are provided to a magistrate in the discretion of Council separate and apart from any salary provided.

The \$4,500 supplement was intended to cover duties performed outside of regular hours. Prior practice confirms that such payments are not part of the salary protected from diminution by the statute.

- Early in his tenure as Chief Magistrate, Jayroe redirected part of that supplement to Magistrate English in the second half of 2005. Thus, he recognized he had the discretion to allocate the supplement as he saw fit.
- In addition, Jayroe's compensation for on-call hours changed when he filled in for the vacant position in 2012-2013. The compensation for those extra hours was removed when the vacancy was filled.

Jayroe has not argued that either of these changes were improper. Nor can he. Changes in compensation based on fluctuating time commitments cannot be prohibited consistent with the structure of the Magistrates' Compensation Act. The prohibition in reduction extends across appointments, so that a magistrate appointed to a second or third term cannot be reduced from what his or her salary was in the first term. But a second appointment of a full time magistrate may be to a part-time position. Or the county council, on recommendation of the chief magistrate, may – as contemplated by S.C. Code Ann. § 22-8-40(F) – change the hours of a magistrate due to the addition of additional magistrates at the next quadrennial appointment cycle. Or a chief magistrate, pursuant to his or her appointment by the Chief Justice, may assign on-call periods that result in

payment as a "stipend," a "supplement," and "supplemental compensation." (Tr. 25:2, 26:9, 73: 23-24, R. 0055, R. 0056, R. 0103).

fewer hours than a previous assignment. If none of those natural and foreseeable and permissible reductions in hours worked can lead to a reduction in the total compensation (while per-hour compensation remains fixed), then every increase in hours, no matter how temporary, would have a one-way ratchet effect on judicial costs for the county. Nothing in the statute indicates that such was a legislatively intended result.

V. THE COUNTY HAS TIMELY PAID ALL AMOUNTS THAT IT OWES JAYROE, AND THERE HAS THUS BEEN NO VIOLATION OF THE PAYMENT OF WAGES ACT.

Jayroe seeks relief under S.C. Code Ann. §§41-10-30, -40, -50, and -60 (Supp. 2015), seeking payment of back wages he contends he is owed, as well as treble damages and attorney's fees. Those claims fail for the same reasons as his other claims – simply, he is not owed any back wages.

Jayroe testified that he received seven days advance notice of the change from a fixed annual \$4,500 stipend to actual payment for hours worked beyond scheduled office time by each part-time magistrate. (Tr. 86:18 – 88:18, R. 0107-0109). Even had he not, the fixed stipend was not part of his individual wages. It went to him only because he assigned himself all weeknight on-call and directed that the County pay the entire amount to him. The stipend, begun in 1995, was meant to be shared among those magistrates working outside of regular office hours. Thus, there was no violation of Sections 41-10-30 and -40.

Moreover, Jayroe received all wages due to him when he left office, plus the disputed amount the County had offered him for prior irregular duty hours over the three years preceding September 2014. The County owes Jayroe nothing and has acted fully in good faith toward him.

Accordingly, Jayroe is not entitled to recover treble damages or attorney's fees under the Payment of Wages Act.¹⁰

¹⁰ Even if Jayroe were owed additional compensation, he would not necessarily be entitled to recover treble damages and attorney's fees. Those remedies are not awarded where there was a good faith dispute over wages due. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 605, 518 S.E.2d 591, 594 (1999) (declining to reinstate trial court's award of treble damages and attorney's fees because there was bona fide dispute about whether employer owed employee any wages); *Rice v. Multimedia, Inc.*, 318 S.C. 95, 99-100, 456 S.E.2d 381, 383 (1995) (affirming trial court's refusal to treble damages where there was bona fide dispute over wages allegedly due). Accordingly, if the County had owed Jayroe additional wages, a separate inquiry would then be necessary to determine whether the County had legitimate reasons for disagreeing in good faith with Jayroe's claim before reaching a conclusion regarding his entitlement to treble damages and attorney's fees. Thus, to the extent the Court reverses any portion of Council's order, the issue of treble damages must be remanded to Council for further findings.

CONCLUSION

Jayroe was entitled to be compensated by the taxpayers of Newberry County for his assigned office hours as magistrate. They did, in fact, so compensate him.

Jayroe was entitled to be compensated by the taxpayers of Newberry County for the performance of official duties outside of his regular office hours. They did, in fact, so compensate him. The September 2014 change in method for making that compensation was not a prohibited reduction in salary.

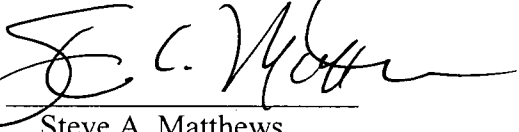
Contrary to his central claim, however, Jayroe was not entitled to be compensated by the taxpayers of Newberry County for time when he was engaged in the same non-magisterial pursuits that they regularly engage in – dining, sleeping, working in his accounting business, reading, watching television or a movie, shopping, socializing with friends and family, playing golf, attending a sporting event or a Wednesday night Bible study.

For all the foregoing reasons, the County respectfully asks this Court to affirm the decision of Council in this matter.

September 21, 2016

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DECISION OF
NEWBERRY COUNTY COUNCIL

Court of Appeals Docket No. 2016-000305

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SC Court of Appeals

Arthur L. Jayroe, Jr. Appellant,

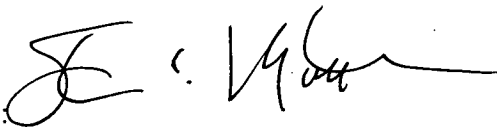
v.

Newberry County Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b).

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Arthur L. Jayroe, Jr. Appellant,

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Newberry County Respondent.

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 21st day of September, 2016, caused the "Final Brief of Respondent" to be served via USPS First Class Mail, postage prepaid, on the following counsel at the address shown below:

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SC Court of Appeals

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