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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

August 10, 1999

The Honorable Joseph McDomick  
Magistrate, St. Helena Island  
Post Office Box 126  
St. Helena Island, South Carolina 29920

Dear Magistrate McDomick:

In a letter to this office, you questioned whether a defendant is entitled to a preliminary hearing where he was indicted before the hearing could be held. Rule 2 of the State Rules of Criminal Procedure provides:

(b) Time for Hearing. If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. The hearing shall not be held, however, if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held. The defendant may appear by counsel or in person or both.

The State Court of Appeals in State v. Hawkins, 310 S.C. 50, 425 S.E.2d 50 (Ct. App. 1992) referenced Rule 2 and its statement that a preliminary hearing is not to be held where the defendant has been indicted before the hearing can be held. The Court also referenced Rule 2(e) and its statement that any delay in holding a preliminary hearing is not a ground for delay of the prosecution of the case in general sessions court.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized

Request letter

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by the Attorney General nor officially published in the manner of  
a formal opinion.

With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

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