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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 29, 1999

Mr. Ronald M. Salley
Orangeburg Municipal Judge
Post Office Box 1425
Orangeburg, South Carolina 29116-1425

Dear Judge Salley:

In a letter to this office you questioned whether S.C. Code Ann. § 14-25-45 (1998) grants municipal judges the same arrest powers as are granted magistrates pursuant to S.C. Code Ann. §§ 22-5-140 and 22-5-150 (1998). Section 14-25-45 states:

Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters. (emphasis added).

Section 22-5-140 states:

Any magistrate shall command all persons who, in his view, may be engaged in riotous or disorderly conduct to the disturbance of the peace, to desist therefrom and shall arrest any such person who shall refuse obedience to his command and commit to jail any such person who shall fail to enter into sufficient recognizance either to keep the peace or to answer to an indictment, as the magistrate may determine.

Mr. Ronald M. Salley
Page 2
September 29, 1999

Section 22-5-150 provides:

Magistrates may cause to be arrested (a) all affrayers, rioters, disturbers and breakers of the peace, (b) all who go armed offensively, to the terror of the people, (c) such as utter menaces or threatening speeches and (d) otherwise dangerous and disorderly persons. Persons arrested for any of such offenses shall be examined by the magistrate before whom they are brought and may be tried before him....

I am unaware of any cases in this State which have specifically construed §§ 22-5-140 and 22-5-150 as being applicable to municipal courts. Prior opinions of this office and prior decisions of the appellate courts in this State which have referenced § 14-25-45 have referred to such provision as referring to subject matter jurisdiction. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997); City of Pickens v. Schmitz, 297 S.C. 253, 376 S.E.2d 271 (1988). In particular in City of Camden, the court referenced §14-25-45 in determining that municipal courts and magistrate courts have the same subject matter jurisdiction over first offense driving under the influence cases. In that same decision, the Court of Appeals stated that subject matter jurisdiction "...is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." 326 S.C. at 562. In Wrenn Bail Bond Service v. City of Hanahan, 335 S.C. 26, 515 S.E.2d 521 (1999) the court recognized that consistent with § 14-25-45, a municipal court has concurrent jurisdiction with a magistrate's court to set bond in criminal cases.

Similarly, opinions of this office which have construed § 14-25-45 have done so in the terms of the jurisdiction of a municipal court to hear and determine certain cases. See, e.g., Ops. of the Attorney General dated October 10, 1984 (municipal courts have no civil jurisdiction); October 12, 1987 (municipal courts have the same subject matter jurisdiction as magistrate courts as to DUS cases); September 29, 1988 (sentencing authority of the municipal court); September 27, 1989, December 5, 1989, April 2, 1997 (municipal courts have same trial jurisdiction as magistrates as to specified criminal cases).

Mr. Ronald M. Salley
Page 3
September 29, 1999

While not free from doubt, it does not appear that § 14-25-45 should be considered as granting municipal courts the same authority possessed by magistrates pursuant to § 22-5-140 and 22-5-150. Of course, if such authority is desired, consideration could be given to requesting legislation specifically granting municipal courts such authority.

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 question asked. It has not, however, been personally reviewed 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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