

## The State of South Carolina



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February 11, 1988

The Honorable Joyce C. Hearn  
Member, House of Representatives  
503B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Hearn:

In a letter to this Office you questioned whether a county council may authorize the construction of a central facility to be utilized in housing two or more magistrates. You further asked whether the county could house two or more magistrates in the same facility and have them share secretarial and clerical help.

Section 22-2-170 of the Code states:

(m)agistrates shall have jurisdiction throughout the county in which they are appointed. Criminal cases shall be tried in the Jury Area where the offense was committed, subject to a change of venue, pursuant to the provisions of § 22-3-920 of the 1976 Code; provided, however, that the chief magistrate for administration of the county, upon approval of the county governing body, may provide for the selection of magistrates' jurors countywide upon the affirmative waiver by the defendant of his right to be tried in the jury area where the offense was committed.

Therefore, pursuant to such provision, a defendant has the right to have his criminal case tried in the jury area where the offense was committed, subject to any change of venue which may be required. However, inasmuch as magistrates have county wide jurisdiction in civil matters, any magistrate in a county could hear a civil case brought in the magistrate's court of that county. See: State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978).

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According to my information there are thirteen magisterial districts in Richland County. Such number of districts is consistent with the provisions of Section 22-2-190 (40) of the Code which establishes thirteen magisterial jury areas for Richland County. Such jury areas were established by the General Assembly in conformity with Section 22-2-20 of the Code.

A prior opinion of this Office dated October 11, 1983 dealt with the situation where a particular magisterial position was vacant and as a result, other county magistrates were traveling to the office of the vacant position to hear cases that typically would be heard by the magistrate at that vacant location. The question was raised as to whether the county legislative delegation could vote to transfer cases that would be heard by a magistrate at the vacant location to other magistrates within the county. The opinion referenced that unless a criminal defendant waives such right, he is entitled pursuant to Section 22-2-170 to be tried in the jury area where an offense was committed. The opinion concluded that consistent with such right of a defendant, we were unaware of any action a delegation could take to transfer criminal cases and thereby avoid the necessity of maintaining the established number of magisterial offices. The opinion advised that legislation would be necessary to reduce the number of magisterial jury areas.

Referencing the above, it appears that the plan to house two or more magistrates in a central facility would conflict with a defendant's right to have his case tried in the jury area where an offense was committed. Facilities would have to be established in each magisterial jury area to afford a defendant this right. Consistent with the earlier advice, in order to house magistrates together in the same facility, legislation would have to be enacted reducing the number of jury areas. Such would be consistent with the provisions of Section 22-2-40 of the Code which states

(t)he General Assembly shall provide for the number and location of magistrates in each county. The provisions of this chapter shall not be construed to prevent more than one magistrate from being assigned to the same jury area.

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If there is anything further, please advise.

Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



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Robert D. Cook  
Executive Assistant for Opinions