

1983 WL 182024 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 11, 1983

*1 Honorable Ryan C. Shealy
Senator
District No. 8
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Shealy:

In a letter to this office you referenced the fact that a Lexington County magisterial position is vacant. You indicated that other Lexington County magistrates are presently alternating in going to the referenced magisterial office to hear cases that typically would be heard by a magistrate at that particular location. Referencing such, you have questioned whether the Lexington County Delegation could vote to transfer cases that would be heard by a magistrate at the present vacant location to other magistrates within Lexington County without depriving any defendants, civil or criminal, of any constitutional rights.

Pursuant to Act No. 714 of 1934 as amended by Act No. 48 of 1953, there are six magisterial districts in Lexington County. Furthermore, pursuant to [Section 22-2-190\(32\) Code of Laws of South Carolina](#), 1976, six magisterial jury areas within Lexington County were established in conformity with [Section 22-2-20, Code of Laws of South Carolina](#), 1976, by the General Assembly.

Inasmuch as all magistrates have county-wide jurisdiction, any Lexington County magistrate could hear a civil case properly brought in a magistrate's court in the County. [Section 22-2-170, Code of Laws of South Carolina](#), 1976, as amended, however, provides that:

' . . . 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, unless a criminal defendant waives such right, such defendant is entitled to have his case tried in the jury area where the offense was committed.

Referencing the above, it appears that to avoid the necessity of maintaining the present system of magisterial offices, the delegation should move to amend the previously enacted legislation providing for six magisterial jury areas and districts. I am unaware of any action the Delegation could take to transfer cases presently and thereby avoid the necessity of maintaining the current number of magisterial offices.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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