

1981 WL 158142 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 10, 1981

*1 Lawrence M. Gressette, Jr., Esquire
P.O. Box 346
St. Matthews, South Carolina 29135

Dear Lawrence:

In a letter to this Office you indicated that the Town of St. Matthews has enacted an ordinance to provide for the establishment of a municipal court. You have questioned whether, in light of the creation of such municipal court, the Mayor or Mayor Pro-Tem would be authorized to issue arrest warrants for violations of municipal ordinances or for other offenses committed within the Town limits in the absence of the Municipal Judge.

As you are aware, the General Assembly during the past legislative session enacted Act No. 480 of 1980, codified as [Sections 14-25-5, et seq., Code of Laws of South Carolina](#), 1976, as amended, which was intended to provide for the establishment of a uniform system of municipal courts in this State. Such Act amended Chapter 25 of Title 14 of the 1976 Code of Laws. As a result of such legislative action, the former code provisions relating to municipal courts and mayor's courts may be considered to have been repealed. This would include former Section 14-25-10 of the 1976 Code of Laws which established the judicial power and authority of mayors and mayors pro tempore and which authorized such officials to issue arrest warrants. See: [Honea Path v. Wright](#), 194 S.C. 461, 9 S.E.2d 924 (1940). Therefore, in the absence of such statutory authority, mayors and mayors pro-tem are without authority to issue arrest warrants.

Inasmuch as mayors are without statutory authority to issue such warrants in the absence of the municipal judge, to alleviate any problems which may occur when the municipal judge is unavailable, consideration should be given to the provisions of Section 14-25-115, *supra.*, which authorize the appointment of ministerial recorders. By such provision, such ministerial recorders are authorized to:

‘ . . . issue summonses, subpoenas, arrest warrants, and search warrants in all cases arising under the ordinances of the municipality, and in criminal cases as are now conferred by law upon magistrates . . . ’

Such ministerial recorders could be available to act when the municipal judge is unavailable.

I had mentioned to you in my letter acknowledging receipt of your opinion request that this Office had been questioned concerning the over-all constitutionality of Act No. 480 of 1980. However, after considerable study and thought, the question has not yet been satisfactorily resolved. Therefore, I thought it best to go ahead and respond to your request.

If there are any other questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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