

1979 WL 42730 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 2, 1979

**\*1 RE: Greenville County Check Clearing House**

Mr. Neal Forney  
Assistant Director  
S.C. Court Administration  
P. O. Box 11788  
Columbia, South Carolina 29211

Dear Mr. Forney:

In a letter to this Office you asked:

1. Does the magistrate who was the Director of the Greenville Check Clearing House, Magistrate Jack P. Cann, continue to serve as a magistrate subsequent to Act 19 of 1975 being declared unconstitutional by the South Carolina Supreme Court?
2. What is the civil and criminal jurisdiction of the magistrate who was the Director of the Greenville Check Clearing House?

By Act No. 19 of 1975 a Check Clearing House for Greenville County, South Carolina was established which was to be ‘ . . . under the supervision of the magistrate designated by a majority of the Greenville County legislative delegation . . . ’ Pursuant to Section 1 of Act No. 481 of 1976, Section 43-791 of the 1962 Code of Laws was amended by adding a magistrate for the Check Clearing House for Greenville County. This Act was later impliedly amended by Act R575 enacted in 1978 which also specifically provided for a magistrate for the Check Clearing House.

By Section 2 of Act No. 481 of 1976, Act No. 19 was also amended to read:

The Check Clearing House shall be under the supervision of the magistrate appointed by the Governor as other magistrates are appointed who shall be designated the director of the Check Clearing House, and who shall have general supervision of its records, reports, operations, systems and employees; provided, however, that employment of personnel and their hours of duty shall be subject to approval by the county legislative delegation and the County Council. The director shall have concurrent jurisdiction with all other magistrates in the county in fraudulent check cases under Section 8-176, 8-177 and 8-178 of the 1962 Code.

Act No. 481 of 1976 was submitted to the Governor on February 26, 1976, but became law without the Governor's signature. Thereafter, on March 9, 1976, Magistrate Cann was appointed to the position of Magistrate of the Check Clearing House with his term to expire June 17, 1979. It may be noted that the records of the Secretary of State's office indicate Magistrate Cann was never commissioned.

In the recent decision of State of South Carolina, ex rel. McLeod v. Crowe, Opinion No. 20805, filed November 13, 1978, it was determined that Act No. 19 of 1975, as amended, was unconstitutional in that [Article V, Section 1 of the South Carolina Constitution](#) was violated. In the opinion of this Office, Act No. 19 of 1975, as amended, is not severable and therefore, pursuant to the Crowe decision all provisions are unconstitutional. Furthermore, it may be implied that in light of the holding of the South Carolina Supreme Court in State of South Carolina, ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1975), the magisterial office associated with the Check Clearing House referenced in Act 481 did not survive

the decision of the Supreme Court in Crowe that the statutes establishing the Check Clearing House were unconstitutional. Therefore, in response to your question, in the opinion of this Office, the magistrate who was the Director of the Greenville County Check Clearing House may no longer continue to serve as a magistrate.

Sincerely,

\*2 Charles H. Richardson  
Assistant Attorney General

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