

1977 S.C. Op. Atty. Gen. 228 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-301, 1977 WL 24641

Office of the Attorney General

State of South Carolina

Opinion No. 77-301

September 26, 1977

\*1 To: Senator James B. Stephen  
Spartanburg County

QUESTIONS:

- (1) Is Section 27-A of Act #1648 of 1968 constitutional?
- (2) Does the Supreme Court have the power to confer and impose county-wide duties and jurisdiction on each county magistrate notwithstanding local acts limiting territorial jurisdiction?
- (3) Assuming the local Act is unconstitutional and, the Supreme Court has the power to assign county-wide magisterial jurisdiction, would the two civil judges in the Civil and Criminal Court, established by Act #167 of 1971, and on whom the legislature conferred 'magisterial authority' also have jurisdiction concurrent with other magistrates in all county territory except Cross Anchor Township? (See Section #1 of Act #167 as to territorial jurisdiction).

DISCUSSION:

The Order issued by the Chief Justice of the Supreme Court on March 29, 1977, designates a Chief Judge for administrative purposes of the Magistrates Courts of certain counties. The Order further provides that the Chief Judge is to establish a schedule whereby a Magistrate within the county is to be available at all times to issue warrants and conduct bail proceedings. This Order doesnot confer a county-wide jurisdiction upon magistrates.

Under Article V, Section 4, Constitution of South Carolina, the Chief Justice is designated the Administrative Head of the unified judicial system in the State. The Supreme Court is empowered to make rules governing the administration of all the courts of the State.

This section of the Constitution gives the Chief Justice and the Court the power to administer the courts of the State. This was a function important in the minds of the framers of this section. In the Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, 1895-1969, the intent of the framers with regard to this section was set out as follows: The Committee believes a modern state court system needs to be under control of some administrative officer who can supervise the whole system. In fact, a unified court system, demands such a procedure . . .

It is implicit that the frames recognized the necessity for a central administrator such that the judicial system could be administered as effectively and efficiently as possible.

This type of authority has been interpreted by courts as a broad power within the Supreme Court, and one that is to be liberally construed. In Buscaino v. Rhodes, 385 Mich. 474, 189 N.W.2d 202 (1971), that court noted that the Supreme Court has broad powers to make rules tending to increase the efficient administration of justice. The action by the South Carolina Supreme Court

is intended to give effect to a more efficient administration of justices by making magistrates available for the timely issuance of arrest warrants or bail proceedings within the State.

In [Miffitt v. Statler Hilton, Inc.](#), 248 A.2d 581 (Conn. 1968), the Connecticut Court recognized the inherent power of the Superior Court to make rules of practice and procedure designed to bring about an early expedition and just determination of the issues before it.

\*2 This view is the most prevalent view regarding the purpose behind the Court's power to promulgate rules of practice and procedure. There is a need for a central administrative figure to insure an efficient and expeditious determination of justice. The Chief Justice, in issuing his Order relative to county-wide duties upon magistrates to issue arrest warrants and conduct bail proceedings, has fully complied with the purpose embodied in the power to promulgate rules.

The Court in [C. E. Duke's Wrecker Service, Inc. v. Oakley](#), 526 S.W.2d 228 (1975), followed this reasoning when it noted that the purpose behind the authority of the Supreme Court to promulgate rules is to avoid unnecessary delay or unnecessary expense in the litigation of cases.

The New Jersey Court has recognized that the Supreme Court's power to make rules governing the administration of all the courts charges the Supreme Court with the responsibility for the overall performance of the judicial branch and implies the power reasonably necessary to perform this function, including full authority over all internal management of the courts. [In re Brennan](#), 126 N.J.Super. 368, 314 A.2d 610 (1974).

The Chief Justice of the Supreme Court, in promulgating his Order pertaining to the administration of Magistrates Courts, has given effect to the constitutional provision authorizing the Court to regulate the administration of and practices and procedures in the courts of the State.

Furthermore, Article V, Section 4 of the South Carolina Constitution gives the Chief Justice the authority to assign magistrates within a county to sit as a magistrate in any of the Magistrates Courts in that county. This is an action which falls under the constitutional authority of the Chief Justice 'to set the terms of any court' and 'to assign any judge to sit in any court within the unified judicial system.'

The Order as issued by the Chief Justice provides for the concurrent jurisdiction of the Chief Judge with all magistrates in the county for the 'issuing of warrants and the conducting of bail proceedings'. This is an Order which is based in the statutory power of the magistrates to issue warrants and conduct bail proceedings.

Section 17-15-10 of the Code of Laws of South Carolina (1976) gives a magistrate county-wide authority with respect to bail proceedings.

Section 17-13-140 provides that a magistrate may upon determination of probable cause issue a search warrant. Section 22-3-710 gives the magistrates authority to issue arrest warrants; and Section 22-5-110 confers the power upon the magistrate to cause to be arrested person charged with an offense within their county.

The Chief Justice in issuing his Order is giving effect to the statutory powers of magistrates to issue warrants and conduct bail proceedings on a county-wide basis. In providing for a Chief Judge for Administrative Purposes having concurrent jurisdiction with the magistrates of the county, the Chief Justice is properly making rules under Article V, Section 4 of the Constitution for the administration of the courts.

\*3 As Paragraph 5 of the Order states, the Chief Judge is to assemble the magistrates of the county 'to establish uniformity of procedure in the county magisterial system'. The Order of the Chief Justice carries out the mandate of both the Constitution and the Legislature under the Article V, Section 4, and merely reiterates the statutory power conferred upon magistrates.

In light of the above conclusion, the collateral question raised need not be addressed; the orders of the Chief Justice specifically provide that they are for administrative purposes of the magistrates courts. There is no conflict between Section 27-A of Act #1648 and the orders of the Chief Justice.

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