



ALAN WILSON
ATTORNEY GENERAL

July 22, 2025

The Honorable Lawrence K. Grooms, Member
South Carolina Senate
P.O. Box 142
Columbia, SC 29202

Dear Senator Grooms:

You seek an opinion as to who may prosecute a case in magistrate court for ordinance code violations. You note that a magistrate in Berkeley County "has been dismissing cases for ordinance code violations in the county if a code enforcement officer attempts to prosecute code violations in her court."

You reference our opinion in 2013 regarding prosecutions in Magistrate's Court by a private citizen and provide the following information:

In 2013, your office issued an opinion to The Honorable C. Ryan Johnson, a magistrate in Greenwood County, related to whether a private party can prosecute a criminal case in magistrate's court. That opinion is the basis upon which the magistrate in Berkeley County is prohibiting code enforcement officers from prosecuting cases in her court.

Your letter continues:

Your 2013 opinion concluded that, based upon the Supreme Court's holding in In re Richland County Magistrate's Court, 389 S.C. 408, 699 S.E.2d 161 (2010), "a court would likely hold a non-lawyer, private citizen is prohibited from prosecuting a courtesy summons case in magistrate's court." The Supreme Court's decision in In re Richland County Magistrate's Court was based in part upon the fact that a non-lawyer, private citizen cannot be presumed to "act in the interests of the community" and cannot exercise the sovereign power of the State. Moreover, the Supreme Court's decision in In re Richland County Magistrate's Court favorably cited State v. Bridgers, 329 S.C. 11, 495 S.E.2d 196 (1997) in which the Court upheld law enforcement officers prosecuting cases in magistrate's court because law enforcement officers "are charged with the discretionary exercise of the sovereign power."

I believe that the magistrate is misapplying with the conclusion that you reached in your 2013 opinion. For example, S.C. Code § 56-7-80 vests with law enforcement

officers and code enforcement officers the authority to enforce county and municipal ordinances, regulates the use of uniform ordinance summons by law enforcement officers and code enforcement officers, and vests "all magistrates' ... courts with jurisdiction to hear and dispose of the charge for which the ordinance summons was issued and served." That means that a code enforcement officer is statutorily empowered to "act in the interests of the community" and exercise a portion of the sovereign power. Therefore, S.C. Code § 56-7-80 alone demonstrates the flaw in the Berkeley County magistrate's reasoning.

In light of the foregoing, please advise me of your opinion as to whether a code enforcement officer is permitted to prosecute cases in Magistrate's court.

The 2013 opinion recognized that only the South Carolina Supreme Court may determine whether a particular activity does or does not constitute the unauthorized practice of law. See S.C. Const. art. V, § 4 ("The Supreme Court; shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.") Thus, while we may provide you with our advisory opinion, unless and until the Court gives its approval, such action by a Code Enforcement Officer, in prosecuting cases in Magistrate's Court, is not recognized as an exception to the unauthorized practice of law. The Court has previously given its approval in a number of instances where law enforcement officers may prosecute their cases in Magistrate's Court, but we are unaware that the Court has yet addressed Code Enforcement Officers prosecuting a violation of an ordinance. We understand, however, that such prosecutions are common throughout the State.

Law/Analysis

In Op. S.C. Att'y Gen., 2013 WL 1695517 (March 26, 2013), we discussed the In re Richland Co. Magistrate's Court case at considerable length. We noted that the decision "... only reaffirmed the Court's concerns regarding the unauthorized practice of law by non-attorneys in Magistrate's court. . . ." We further explained that the Court "addressed a prosecution for the recovery of worthless checks by a non-lawyer field agent from a local business acting as the prosecutor." We stated:

"[s]ignificantly, the Court discussed its previous decisions permitting non-solicitors to prosecute criminal cases in magistrate's court. . . ." noting that the Supreme Court stated:

[The Solicitor] correctly notes this Court has previously permitted persons other than solicitors to prosecute criminal cases in Magistrate's Court. See, e.g. State v. Messervy, 258 S.C. 110, 187 S.E.2d 524 (1972); City of Easley v. Cartee, 309 S.C. 420, 424 S.E.2d 491 (1992). Though this Court sanctioned the practices of allowing the arresting South Carolina Highway Patrol Officer to prosecute traffic-related offenses and licensed security officers to prosecute misdemeanor cases in Magistrate's Court such non-attorneys are law enforcement officers acting in the capacity of public

officials and are sworn to uphold the law. See Messervy, 258 S.C. at 112, 187 S.E.2d at 525; Cartee, 309 S.C. at 422, 424 S.E.2d at 491; S.C. Code Ann. § 8-11-20 (2009). Consequently, they act on behalf of the State. See State v. Bridgers, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997) (“[A]s law enforcement officers, they are charged with the discretionary exercise of the sovereign power. Specifically, they must enforce the ‘traffic and other related laws’”). This classification was essential to the Court’s holding in Cartee. . . . As a non-lawyer representing a corporation is not a law enforcement officer, we cannot assume he will act in the interests of the community. Moreover, as a non-lawyer, the representative of the corporation is not bound by the professional ethical restraints. Consequently, the non-lawyer prosecutor not only acts on interests other than those of the community but is also not bound by ethical rules, et his prosecution may result in the imprisonment of the defendant. See S.C. Code Ann. § 22-3-550 (2007).

699 S.E.2d at 164-65. Accordingly, the Court concluded:

[t]he dignity and might of the State are brought to bear on decisions to prosecute. These decisions must not be made by interested parties. We therefore find that a non-lawyer’s representation of a business entity in criminal magistrate’s court runs afoul of South Carolina law, is repugnant to our system of justice and constitutes the unauthorized practice of law.

Id. 629 S.E.2d at 165.

Our 2013 opinion, referenced in your letter, also involved the question of whether a private party could act as prosecutor in magistrate’s court. See Op. S.C. Att’y Gen., 2013 WL 3762705 (July 9, 2013). There, the factual situation was posed as follows:

Person X, a private citizen, swears before a magistrate that Person Y struck him in the face. Probable cause is found for Assault and Battery 3d degree and a courtesy summons is issued. The summons is served on Person Y. Both Person X and Y appear for the court date. . . .

Can Person X present evidence and prosecute the case.

Based upon the In re Richland County Magistrate decision, we concluded:

. . . We are constrained to find that a court would likely find a non-lawyer, private citizen is prohibited from prosecuting a courtesy summons in Magistrate’s Court. Furthermore, the Court has generally only sanctioned the practice of allowing non-lawyers to prosecute misdemeanor cases in Magistrate’s Court in certain situations where the role of prosecutor is served by the arresting law enforcement officer. . . . Because a courtesy summons is simply served by a law enforcement officer upon a defendant notifying him or her to appear for trial to answer the charges against them,

we cannot conclude that a law enforcement officer is the property party to prosecute such cases. As we reiterated in a 2005 opinion, “a solicitor is deemed to maintain control of any case brought in Magistrate’s Court.” Op. S.C. Att’y Gen., 2005 WL 3352851 (Nov. 28, 2005). Unless and until the court issues a decision overruling or modifying In re Richland County Magistrate’s Court in a manner which allows either the affiant a courtesy summon or a non-lawyer law enforcement officer to present such cases in Magistrate’s court, we must advise that such practices are not permitted under the law.

We agree with you that the 2013 opinion is considerably different from the situation where a Code Enforcement Officer prosecutes criminal ordinances in Magistrate’s Court. By contrast, a Code Enforcement Officer is a public officer who exercises the sovereignty of the State (a political subdivision of the State) in issuing an ordinance summons against a person violating an Ordinance of the County or Municipality. While the Code Enforcement Officer is prohibited from making a custodial arrest, he or she is, nevertheless, enforcing the law against a violator as a law enforcement officer. Such does not merely involve the prosecution by a private party as was the case in our 2013 opinion. Instead, as we have previously concluded, in Op. S.C. Att’y Gen., 2012 WL 1154553 (March 27, 2012), a Code Enforcement Officer is a public officer exercising sovereign power. There, we concluded:

[t]he appointment of county code enforcement officers is authorized by S.C. Code § 4-9-145 (Supp. 1996). Pursuant to this statute, the governing body of the County may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the County. Code enforcement officers are vested with all the powers and duties conferred by law upon constables in addition to the duties imposed upon them by the governing body of the county. Id. These code enforcement officers are authorized to exercise their powers on all private and public property within the County. Id. Code enforcement officers commissioned under this statute are not permitted to perform a custodial arrest. Id. However, they are authorized to issue an ordinance summons to cite a violation of a county ordinance. S.C. Code Ann. § 56-7-80 (Supp. 1996).

Based on the foregoing description of the powers of a code enforcement officer, it is apparent that the officer exercises one of the traditional sovereign powers of the State: police power. While code enforcement officers are not given the power to perform a custodial arrest, they are given many of the other powers traditionally accorded to peace officers in this State, including the power to issue an ordinance summons on behalf of the County. Accordingly, . . . a code enforcement officer for the Aiken County Tax Collector’s Office would be considered an officer for dual office holding purposes.

That 2012 Opinion went on to conclude that “[t]he same reasoning would apply to a code enforcement officer of a municipality.” (citing § 5-7-32 as similar to § 4-9-145).

Most recently, in Op. S.C. Att’y Gen., 2023 WL 6036769 (September 8, 2023), we reviewed in considerable detail our previous opinions concerning the powers and duties of code

enforcement officers. In that review, we considered “various circumstances under which litter control and code enforcement officers are considered law enforcement officers.” We there stated:

In 1991, we issued an opinion concluding security officer appointed via section 4-9-145 were entitled to a subsistence allowance available to “commissioned law enforcement officers.” Op. S.C. Att’y Gen., 1991 WL 474752 (S.C.A.G. April 1, 1991). In another 1991 opinion, we determined:

Section 4-9-145 was enacted as a means of providing law enforcement authority for individuals in salaried county positions such as animal control and litter control. Because of their law enforcement authority, these officers are required to attend the State Criminal Justice Academy, EE Section 23-23-40 OF THE CODE. Op. S.C. Att’y Gen., 1991 WL 474786 (S.C.A.G. Oct. 16, 1991).

In 1993, we addressed whether litter control officers could use blue lights. We concluded they could based on the following:

Pursuant to Section 4-9-145 county code enforcement officers are granted law enforcement authority inasmuch as these officers are granted “all the powers and duties conferred by law upon constables.” See: State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935). See also: Opins of the Att’y Gen. dated February 9, 1981, July 12, 1976, and July 17, 1975. Presumably, therefore, the vehicles used by these officers would qualify as vehicles used “primarily for law enforcement purposes” or as “policy vehicles.” Therefore, it appears that such officers would be authorized to use blue lights on their county vehicles. Op. Att’y Gen., 1993 WL 439030 (S.C.A.G. Sept. 13, 1993).

In 1997, we were asked whether a code enforcement officer appointed pursuant to section 4-9-145 could be issued and carry a weapon or pistol during the performance of his or her duties. Op. Att’y Gen., 1997 WL 255969 (S.C.A.G. Apr. 24, 1997). We analyzed whether code enforcement officers are exempt from the concealed weapons law, which specifically exempts regular, salaried law enforcement officers. Id. We noted a prior opinion that determined code enforcement officers are “officers” for purposes of dual office holding. Id. We also noted our 1993 opinion relying on the powers afforded to code enforcement officers to determine their vehicles were law enforcement vehicles. Id. Citing to the statute defining “law enforcement officer” for purposes of the Law Enforcement Officer Act, we stated:

... an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed. Id. We also considered the fact that a code enforcement officer possesses “all the powers and duties conferred by law upon constables,” even though at the

same time no such officer “may perform a custodial arrest.” We have recognized that

. . . a state constable is clearly recognized as a state officer, possessing statewide law enforcement authority as a peace officer. Our Supreme Court has stated that constables perform all the duties of law enforcement officers and in particular “a constable stands on the same footing as a sheriff.” State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908). In Allen v. Fidelity and Depos. Co. of Md., 515 F.Supp. 1185, 1189 (D.S.C. 1980), the Court noted that in 1870 constables with general law enforcement powers existed at the city, county and state levels together with county sheriffs and to a lesser extent coroners, were the principal providers of law enforcement for the State of South Carolina.

Op. Att’y Gen., January 25, 1996 (Informal Opinion).

Id. As such, we concluded “a Code Enforcement Officer could be deemed exempt from the concealed weapons law pursuant to Subsection (1) of [section 16-23-20].” Id.

On numerous occasions, we have also determined a code enforcement officer appointed pursuant to Section 4-9-145 is a Class 3 officer requiring certification by the South Carolina Law Enforcement Training Council. Ops. Att’y Gen., 2016 WL 4836949 (S.C.A.G. Oct. 2, 2012); 2012 WL 1561867 (S.C.A.G. Apr. 19, 2012); 2009 WL 1649232 (S.C.A.G. May 6, 2009). In one of the 2012 opinions, we noted “(a)lthough Class 3 officers do not have the same powers and duties of regular policy officers such as deputies or state troopers, Class 3 officers are nonetheless certified law enforcement officers with some, albeit limited powers of arrest.” Op. Att’y Gen., 2012 WL 4836949 (S.C.A.G. Oct. 2, 2012).

While we recognized in that opinion that on one previous occasion we had concluded that a Code Enforcement Officer might not be a law enforcement officer for certain purposes (Op. S.C. Att’y Gen., 2000 WL 1803586 (Nov. 8, 2000), i.e. issuing Uniform Traffic Tickets), we have considered a Code Enforcement Officer to be a law enforcement officer for the most part.

Also, in a 2012 opinion, we concluded that an ordinance summons issued by a Code Enforcement Officer, pursuant to § 56-7-80, bestows jurisdiction upon the Magistrate’s Court as to ordinance violations cited by the Code Enforcement Officer. There, we stated,

[f]urther, § 56-7-80 provides for counties and municipalities to adopt and use an ordinance summons for the enforcement of ordinances by law enforcement and code enforcement officers. A uniform ordinance summons may not be used to perform a custodial arrest. See § 56-7-80(B). The ordinance summons gives the code enforcement officer an alternative method for enforcing ordinances and gives the magistrate’s court jurisdiction over the matter without the code enforcement officer having to resort to the use of a ticket or arrest warrant.

Op. S.C. Att’y Gen., 2012 WL 5376055 (Oct. 19, 2012).

Finally, we know of no statute prohibiting a Code Enforcement Officer from prosecuting ordinance violations in Magistrate’s Court. See State v. Messervy, *supra*. [“In New Hampshire, as in South Carolina, there was no statute prohibiting a police officer from prosecuting a case.”]. Indeed, the statutory law [§ 56-7-80] provides a Code Enforcement Officer “an alternative method for enforcing ordinances” by providing a means to give the Magistrate’s Court jurisdiction over the matter,” much like a Uniform Traffic Ticket or an arrest warrant does. Thus, rather than prohibiting a Code Enforcement Officer from prosecuting ordinance cases in Magistrate’s Court, § 56-7-80 appears to anticipate such prosecution.

Conclusion

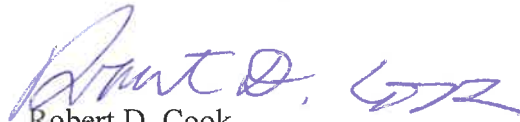
We agree with you that our 2013 Opinion to Judge Ryan Johnson is not on point with respect to a Code Enforcement Officer. In sharp contrast to the 2013 Opinion, which involved a private party seeking to prosecute in Magistrate’s Court, a Code Enforcement Officer “exercises one of the traditional sovereign powers of the State: police power. While code enforcement officers are not given the power to perform a custodial arrest, they are given many of the other powers traditionally accorded to peace officers in this State, including the power to issue an ordinance summons on behalf of the county.” Op. S.C. Att’y Gen., 2012 WL 1154553 (March 27, 2012). Thus, they are officers who possess the powers and duties of constables and, for that reason, we consider them to be law enforcement officers.

The Supreme Court has never held that officers must possess the power to make custodial arrests in order to prosecute in Magistrate’s Court. We know of no statute prohibiting such activity. Messervy, *supra*. As the Court found in State v. Bridgers, *supra*, the key to allowing prosecutions which do not constitute the unauthorized practice of law is that the public officer is “charged with the discretionary exercise of the sovereign power.” 329 S.C. at 14, 495 S.E.2d at 198. Here, as was recognized in In re Richland County Magistrate’s Court, *supra*, unlike a private party, a public officer, such as a Code Enforcement Officer, is sworn to uphold the law, and act in the interests of the community at large. Accordingly, it is our opinion, based upon the previous criteria, that the Court would likely allow a Code Enforcement Officer to prosecute ordinance criminal violations in Magistrate’s Court.

Of course, our opinion herein is advisory only. Unless and until the Supreme Court – which has the exclusive authority to determine whether or not an activity constitutes the unauthorized practice of law – concludes that Code Enforcement Officers may prosecute ordinances in magistrates or municipal court, we can only predict how the Court might rule. Only the Supreme Court may approve such prosecutions. We understand the Court is very open to issuing its opinion regarding the practice of law in this area. Thus, such opinion should most probably be sought for the purpose of clarification.

The Honorable Lawrence K. Grooms
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Sincerely,

A handwritten signature in blue ink, appearing to read "Robert D. Cook", followed by a stylized flourish or mark.

Robert D. Cook
Solicitor General