

8174 *February*



HENRY McMASTER
ATTORNEY GENERAL

July 6, 2006

Chief Frank J. Zebedis
Winthrop University Police Department
526 Myrtle Drive
Rock Hill, South Carolina 29733

Dear Chief Zebedis:

In a letter to this office you requested an opinion as to financial transaction card fraud and jurisdiction of a court with regard to such offense. The situation that prompted your question resulted from a Winthrop University procurement card being used by an individual to purchase food at various places in York County. You indicated that the individual who used the card obtained the card number while working at a restaurant within the city limits of Rock Hill. He then forged the name of the card holder at various places in Fort Mill and York County, areas outside the city limits of Rock Hill. With regard to such actions, you referenced S.C. Code Ann. § 16-14-60 which provides that an individual is guilty of the offense of financial transaction card fraud

...when, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, he:...

(1) uses for the purpose of obtaining money, goods, services, or anything else of value a financial transaction card obtained or retained...in violation of Section 16-14-20...

(2) obtains money, goods, services, or anything else of value by:

(a) representing without the consent of the specified cardholder that he has permission to use it;

(b) presenting the financial transaction card without the authorization or permission of the cardholder.

S.C. Code Ann. § 16-14-20 states that

Reginald Little
REGINALD C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TEL: 803-732-1111

[a] person is guilty of financial transaction card theft when he:

(1) takes, obtains, or withholds a financial transaction card or number from the person, possession, custody, or control of another without the cardholder's consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained, or withheld, receives the financial transaction card or number with intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder....

You indicated that Winthrop University is inside the city limits of Rock Hill and the Winthrop Police Department uses the Rock Hill municipal judge to sign warrants. In this particular instance, the case was presented to a city court recorder and warrants were obtained from the municipal judge. These warrants were then countersigned by a county magistrate for service in York County. Subsequent to such, the Rock Hill municipal court judge contacted your department and indicated that the Rock Hill municipal court judge had no jurisdiction to sign the warrants. She instead indicated that such should have been signed by a county magistrate or a magistrate in the jurisdiction where the credit card was used.

As to the jurisdiction of the municipal court, as stated in an opinion of this office dated May 14, 1996, "...the jurisdiction of the municipal court consists of offenses committed within the corporate limits of the municipality." See also: Op. Atty. Gen. dated September 16, 1980 ("...the territorial jurisdiction of the recorder's court is the limits of the municipality in which the court is created."). Also, as stated in an opinion of this office dated November 1, 1972, "[a] magistrate or other judicial officer is only empowered to issue arrest warrants for offenses committed within his territorial jurisdiction." In examining this question, you also referenced subsection (e) of Section 16-14-60 which states:

(i)n any prosecution for violation of Section 16-14-60, the State is not required to establish and it is no defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.

I am unaware of any court decisions in this State which have interpreted such provision.

As referenced in a prior opinion of this office dated October 22, 2001,

[t]he general law in South Carolina is that more than one jurisdiction can be the appropriate venue for criminal process, depending on the circumstances. See *Wray v. State*, 288 S.C. 474, 343 S.E.2d 617 (1986) (where acts essential to the offense are committed in different counties, the accused may be tried in either county). See also *State v. McLeod*, 303 S.C. 420, 401 S.E.2d 175 (SC App. 1991) (where some acts material to the offense, and requisite to its consummation occur in one county, and some in another, venue is proper in either county). This office has previously opined

that this general law is also applicable to offenses arising partly within a municipality. See Op. Atty. Gen. dated May 14, 1996 (municipality would have jurisdiction over offense involving the telephone where receiver of call is within the city limits even if call is placed from a location outside city limits).

Also, as set forth in *State v. Gasque*, 241 S.C. 316, 128 S.E.2d 154, 155 (1962), *overruled on other grounds*, *State v. Evans*, 307 S.C. 477, 415 S.E.2d 816 (1992),

[s]ome crimes are of such a nature that they may be committed partly in one county and partly in another. When an offense is committed partly in one county and partly in another, that is, where some acts material and essential to the offense and requisite to its consummation occur in one county and some in the other, the accused may be tried in either. However, this rule has no application when the offense is complete in one county.

See also: State v. McLeod, 303 S.C. 420, 401 S.E.2d 175 (1991); *Wray v. State*, 288 S.C. 474, 343 S.E.2d 617 (1986). In my opinion, such conclusion would be equally applicable to offenses that are committed partly in one municipality and in areas outside the municipality.

As stated, you indicated that the card was used at locations outside the city limits of Rock Hill but the card number was obtained while the individual was working at a restaurant within the city limits of Rock Hill. Therefore, although the card was subsequently used at locations outside the city limits of Rock Hill, some of the activities associated with the improper use of the card occurred in Rock Hill. In my opinion, two different criminal offenses are possible in such circumstances. As referenced, Section 16-14-20 provides that an individual is guilty of financial transaction card theft when he “(1) takes, obtains, or withholds a financial transaction card or number from the person, possession, custody or control of another without the cardholder’s consent and with the intent to use it...” (emphasis added). Section 16-14-60 states that an individual is guilty of financial transaction card fraud when he or she “...uses for the purpose of obtaining money, goods, services, or anything else of value a financial transaction card obtained or retained...in violation of Section 16-14-20...” (emphasis added). Therefore, as to the situation you presented, in my opinion, a warrant could be obtained in Rock Hill charging an offense pursuant to Section 16-14-20, taking or obtaining a financial transaction card or number. However, a warrant could also be obtained in Rock Hill charging a violation of Section 16-14-60, using a card obtained in violation of Section 16-14-20. The fact that the card was used outside Rock Hill does not, in my opinion, prevent a Rock Hill municipal judge from issuing a warrant, especially where part of the offense, obtaining the number, occurred in Rock Hill. Such would be consistent with the law referenced above that provides that more than one jurisdiction can be the appropriate venue for criminal process, depending on the circumstances. As stated, where some acts material to the offense occur in one locality and some in another, venue is proper in either area. Also, as set forth by Section 16-14-60(e), “...it is no defense that some of the acts constituting the crime did not occur in this State or within one city, county or local jurisdiction.”

Chief Zebedis
Page 4
July 6, 2006

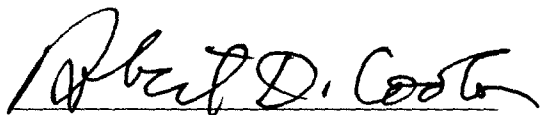
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General