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HENRY McMASTER
ATTORNEY GENERAL

March 15, 2006

The Honorable B. Lee Miller
Municipal Court Judge
Post Office Box 40
Greenwood, South Carolina 29648

Dear Judge Miller:

In a letter to this office you referenced the following situation:

An individual, who resides in another county in South Carolina, is visiting Greenwood and is a witness to a crime within the city limits of Greenwood. A subpoena is issued to the individual pursuant to S.C. Code Ann. § 22-3-930 prior to the individual returning to his home county.

You have asked whether if the individual fails to appear in court, can a rule to show cause be issued? If a rule to show cause is issued and properly served on the individual who resides in another county, if that individual fails to appear pursuant to the subpoena, can a bench warrant be issued for contempt?

Section 22-3-930 states:

Any magistrate, on the application of a party to a cause pending before the magistrate, must issue a summons citing any person whose testimony may be required in the cause and who resides in the county to appear before the magistrate at a certain time and place to give evidence. This summons must be served in a manner such that it is received by the witness at least one day before his attendance is required. If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section 22-3-550.
(emphasis added).

Request Letter

The Honorable B. Lee Miller
Page 2
March 15, 2006

Such provision is applicable to criminal and civil cases before a magistrate. Such provision is also applicable to municipal court judges inasmuch as S.C. Code Ann. § 14-25-45 states that the municipal court "...shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates."

In interpreting Section 22-3-930, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Pursuant to Section 22-3-930, a municipal judge may only issue a subpoena to an individual "who resides in the county" to appear in court and testify. In my opinion, such provision would be inapplicable to an individual who resides in another county and is merely visiting the county from which the subpoena is issued. A prior opinion of this office dated June 10, 1980 construed Section 22-3-920 to conclude that magistrates "do not have wide powers to compel testimony" and would not have the authority to subpoena a state agency outside their county.


Therefore, in my opinion, a municipal judge would not be authorized to issue a rule to show cause to an individual who resides in a county other than that of the municipal judge and who fails to appear in court pursuant to a subpoena issued by that municipal judge. Therefore, it would be improper to issue a bench warrant in such circumstances.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General