



7269 February

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

January 25, 2002

The Honorable Jay Hodge  
Solicitor, Fourth Judicial Circuit  
Darlington County Courthouse  
1 Public Square  
Darlington, South Carolina 29532

**Re: Solicitor's authority - Preliminary Hearings**

Dear Solicitor Hodge:

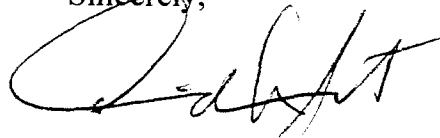
In a letter to this Office, you indicate that you have employed a full-time Solicitor for Dillon County who wishes to handle all preliminary hearings for General Sessions cases made in Dillon County. You also indicate, however, that the City Attorney for Dillon wishes to handle preliminary hearings requested for General Sessions cases made by officers of the Dillon Police Department. Given this conflict, you request an "opinion as to whom has the responsibility, and the right, to represent the State at preliminary hearings that are within the jurisdiction of the Court of General Sessions?"

When a criminal case involves a violation of State law initiated by a warrant issued by and returnable to a municipal court, the municipality is not substituted as the prosecuting authority. City of Lake City v. Daniels, 268 S.C. 396, 234 S.E.2d 222 (1977). "The State remains throughout as the prosecuting authority." Id. The Attorney General is designated by State Constitution as the chief prosecuting officer of the State with the circuit solicitors actually performing the prosecution of most criminal cases. State, ex rel. McLeod v. Snipes, 266 S.C. 415, 223 S.E.2d 853 (1976). In State v. Addis, 257 S.C. 482, 186 S.E.2d 415 (1972), the Supreme Court held that "[i]n every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he must and does have full control of the State's case."

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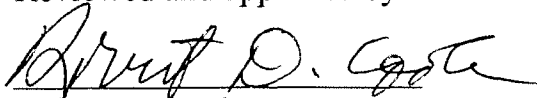
It goes with out saying that a charge which allows for a preliminary hearing involves a violation of State law.<sup>1</sup> It further goes without saying that, once requested, the preliminary hearing becomes an integral part of the case against the defendant. Accordingly, it is my opinion that, unless prosecution has been assumed by the Attorney General, the solicitor has "the responsibility, and the right, to represent the State at preliminary hearings that are within the jurisdiction of the Court of General Sessions."

Sincerely,



David K. Avant  
Assistant Attorney General

Reviewed and approved by:



Robert D. Cook  
Assistant Deputy Attorney General

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<sup>1</sup> Penalties for violations of municipal ordinances are limited to the jurisdiction levels of magistrate's courts. Accordingly no preliminary hearing is required in such cases.