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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 13, 2001

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

Re: Request for Advisory Opinion - Dillon County 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."

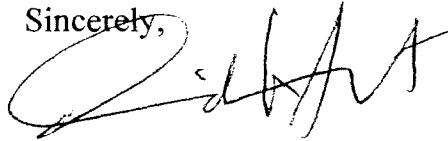
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It goes without saying that a charge which allows for a preliminary hearing involves a violation of State law.¹ It further goes without saying that, once requested, the preliminary hearing becomes an integral part of the case against the defendant. 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."

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Avant", written over the word "Sincerely,".

David K. Avant
Assistant Attorney General

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¹ 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.