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CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 14, 1996

The Honorable Robert K. Whitney
Municipal Court Judge, City of Westminster
Post Office Box 399
Westminster, South Carolina 29693

Re: Informal Opinion

Dear Judge Whitney:

You raise an issue concerning the jurisdiction of the municipal court. Your question concerns the following situation:

> [a] telephone call is said to have originated outside of the city limits, and it was received within the city limits. The telephone call was in violation of the law as an illegal use of the telephone.
>
> Does the city have jurisdiction over the matter? The crime would not have occurred if the telephone had not been answered in the city.

Law/Analysis

South Carolina Code Ann. Section 14-25-5 provides for the establishment of municipal courts in South Carolina. Section 14-25-5(a) provides in pertinent part that "[t]he council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State for the trial and determination of all cases within its jurisdiction." Section 14-25-45 provides for the jurisdiction of the municipal courts as follows:

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> [e]ach municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.

This Office has opined on more than one occasion that the jurisdiction of the municipal court consists of offenses committed within the corporate limits of the municipality. In an opinion of September 16, 1980, we stated that "[t]here is no question that the territorial jurisdiction of the recorder's court is the limits of the municipality in which the court is created. 9 McQuillin, Municipal Corporations, Section 27.03 (3d Ed.)." And in an opinion of November 18, of that same year, we reiterated:

> [g]enerally, the corporate limits of a municipality are considered as the limits of the territorial jurisdiction of municipality courts. 9 McQuillin, Municipal Corporations, Section 27.03 (3d Ed.). The South Carolina Supreme Court in State v. Blue, 215 S.E.2d 905 (1975) stated that pursuant to the section now codified as Section 14-25-970, Code of Laws of South Carolina, 1976,
>
> > [t]he jurisdiction conferred on Recorders, ..., includes concurrent jurisdiction with magistrates to issue warrants for arrests within the city limits for offenses beyond their jurisdiction to try and ..., to sit as examining courts in such cases, where the offenses are committed within the corporate limits of the city.' 215 S.E. 2d at 908 [Emphasis added].

Therefore, as to your question concerning the jurisdiction of a municipal court to issue an arrest warrant for an offense which is committed outside the corporate limits of a municipality where an officer is in pursuit, the municipal court would not have such jurisdiction. Instead the warrant should be issued by a county magistrate. As to your second question, the three mile limit of authority to make arrests

> granted an officer in pursuit does not affect the territorial jurisdiction of a municipal court.

Thus, it is well-settled that the jurisdiction of the municipal court is limited to offenses occurring within the corporate limits of the municipality.

That does not end the question, however. It is also established that there are certain offenses which are deemed to be committed in part, at least, in more than one jurisdiction. When such is the case, our Court has consistently held that, notwithstanding the constitutional requirement that a person be tried in the county where an offense is committed, S.C. Const. Art. I, Sec. 11, jurisdiction over these offenses is multiple and thus not limited to one specific jurisdiction. As the Supreme Court stated in State v. Gasque, 241 S.C. 316, 128 S.E.2d 154 (1962), overruled on other grounds, State v. Evans, ____ S.C. ____, 415 S.E.2d 816 (1992):

> [s]ome crimes are of such 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.

241 S.C. at 320. A number of other South Carolina Supreme Court cases have recognized this exception. State v. McLeod, 303 S.C. 420, 401 S.E.2d 175 (1991); Wray v. State, 288 S.C. 274, 343 S.E.2d 617 (1986); State v. Jordan, 255 S.C. 86, 177 S.E.2d 464 (1970); State v. DeWitt, 254 S.C. 527, 176 S.E.2d 143 (1970); Shelnut v. State, 247 S.C. 41, 145 S.E.2d 420 (1965); State v. Perez, 311 S.C. 542, 430 S.E.2d 503 (1993).

This principle has elsewhere been applied with respect to offenses involving the misuse of the telephone as such offenses affect the jurisdiction of the municipal court. In Donley v. City of Mountain Brook, 429 So.2d 603 (Ct. Crim. App. 1982), an individual was charged with telephone harassment under Alabama law. The defendant made the alleged calls from the city of Homewood to persons in the municipality of Mountain Brook. The question before the Court of Appeals was whether the municipal court of Mountain Brook had jurisdiction over the offense since the defendant had committed the wrongful acts in Homewood.

The Court rejected the idea that the Mountain Brook Court possessed no subject matter jurisdiction or jurisdiction over the person. While recognizing with certitude that for "Mountain Brook to have jurisdiction to prosecute ... the violation must occur within the limits of its police jurisdiction ...", the Court concluded that Mountain Brook had jurisdiction because "the harassing communications were received at the Mullins' end of the telephone line in Mountain Brook." Reasoned the Court,

> [w]hether or not "dialing" is the equivalent of "communication" is not the issue before us. See, People v. Green, 63 Misc.2d 435, 312 N.Y.S.2d 290 (1970). It is clear, however, that the crime of harassing communications does require some "communication." In this case the Mullins' telephone ringing and Mrs. Mullins answering it only to hear the breathing or a hang up click constituted "communication." As the criminal court of the City of New York stated: "The unwanted receiver of 35 calls on a 'ring and hang up' gets the message." Green, supra, 312 N.Y.S.2d, at 293, 294. The "communications" that were received at the Mullins' residence occurred at Mountain Brook. ... The violation of Section 13A-11-8(b) occurred then within the police jurisdiction of Mountain Brook. This being the case, the City of Mountain Brook was properly vested with jurisdiction for the prosecution of the offense under Section 12-14-1(b).

429 So.2d at 603.

Other authorities reach the same conclusion. In People v. Anonymous, 52 Misc.2d 772, 276 N.Y.S.2d 717 (1965), the Court analyzed the situation where a harassing phone call was made outside the city limits of Buffalo to someone in the city. Concluding that the Buffalo municipal court had jurisdiction, the Court explained:

> [a]lthough the presence of the accused within the territory in which he is accused is considered essential, such presence need not be actual; it may be constructive. "The theory of the law is that where one puts in force an agency for the commission of crime, he, in legal contemplation, accompanies the agency to the point where it becomes effectual." 21 Amer.Jur.2d Sec. 386, 156 A.L.R. 862 ff. In the case at bar for the purpose of making out a prima facie case it would make no difference if the call originated in one of the suburbs,

> another county or even in Canada. If the defendant talked into a dead phone in any of those places regardless of threats or obscenity there would be no crime. But talking into a LIVE phone connected with the complainant to whom threats and obscenities are conveyed, the crime if any is committed by the defendant at the point where complainant received the call and in this case in the City of Buffalo in the Endicott Square Building. Strassheim v. Daily, 221 U.S. 280, 284, 31 S.Ct. 558, 55 L.Ed. 735. See also 4 Wharton's Criminal Law and Procedure, Sec. 1506. Hyde v. United States, 225 U.S. 347, 32 S.Ct. 793, 56 L.Ed. 1114.

276 N.Y.S.2d at 719. See also, People v. Brown, 53 Misc.2d 343, 278 N.Y.S.2d 321 (1967); People v. Daly, 154 Misc. 149, 276 N.Y.S. 583 (1935); City of Plymouth v. Simonson, 404 N.W.2d 907 (Ct. App. Minn. 1987); United States v. Thayer, 209 U.S. 39, 43, 28 S.Ct. 426, 427, 52 L.Ed. 673 (1908). [per Holmes, J. concluding that solicitation was not complete until letter was received and read].

Our own Supreme Court has previously held that where one steals goods in another State and converts them to his own use in South Carolina, our courts have jurisdiction over the offense. State v. Hill, 19 S.C. 435 (1883). Such offenses are deemed continuing in nature and a key element, the conversion to one's own use is viewed as essential. See also, State v. Thurston, 2 McMul. (27 S.C.L.) 382; State v. McCann, 167 S.C. 393, 166 S.E. 411 (1932).

Here statutes such as Section 16-17-430 generally require a "communication" for the offense to have been committed. Even where no words are actually spoken, the key element in the offense is the harassment of another. As stated by the Court in People v. Fair, 60 Misc.2d 305, 302 N.Y.S.2d 654 (1969), "[o]bviously the statute contemplates a completed call through the use of the word 'makes' rather than 'places.'"

Based upon the foregoing authorities, it is my opinion that the municipal court would generally have jurisdiction over offenses involving the telephone even if the caller were not within the corporate limits of the municipality where the receiver of the completed call is within the territory of the city limits.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an