

6405 Luluway



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 12, 1997

The Honorable George H. Bailey
Member, House of Representatives
P. O. Box 633
St. George, South Carolina 29477

Dear Representative Bailey:

I am in receipt of your recent opinion request. You have informed this Office that questions have been raised in Dorchester County regarding the proper location to hold a Magistrates' Court trial in a criminal case or traffic offense. You have asked whether recently enacted Act No. 61 of 1997 requires that Magistrates' Court trials in criminal cases or traffic offenses be held in the jury area where the offense was committed.

This past year, the General Assembly enacted Act No. 61 of 1997, which amended Section 22-2-190, as amended, of the South Carolina Code of Laws. This Act revises the jury areas for Magistrates' Courts in Dorchester County and provides that "[C]riminal cases and traffic offenses shall be tried in the jury area where the offense was committed, notwithstanding the creation of any uniform court for the trial of certain offenses."

The primary function in interpreting a statute is to ascertain the intention of the Legislature. Where the terms of a statute are clear and unambiguous, there is no room for interpretation, and we must apply them according to their literal meaning. South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134. The use of the term "shall" connotes mandatory compliance with the act. 3 Sutherland Statutory Construction §57.02.

The terms of Act No. 61 is clear and unambiguous and, therefore, must be applied according to their literal meaning. Accordingly, if a trial is to be held in a criminal case or a traffic offense before a Magistrate, the trial must be held in the jury area where the

Request Letter


The Honorable George H. Bailey
Page 2
November 12, 1997

offense was committed.¹ Further, the creation of a uniform court for the trial of certain offenses will not change this result.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General

¹ While all acts of the General Assembly are presumed to be constitutional in all respects, I am concerned that Act No. 61 does not provide the defendant with opportunity to seek a change of venue. Section 22-2-170 of the Code provides that criminal cases shall be tried in the jury area where the offense was committed, subject to a change of venue. Therefore, pursuant to Act No. 61, it may be argued that in Dorchester County, as opposed to the other counties of this State, an individual may not seek a change of venue. In my opinion, this portion of Act No. 61 may be constitutionally suspect under Article V of the South Carolina Constitution which provides for a unified judicial system.