

The State of South Carolina



Office of the Attorney General

Opinion No 86-67
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June 11, 1986

The Honorable Allan T. Holmes
Chief Magistrate
Post Office Box 489
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Dear Judge Holmes:

In a letter to this Office you questioned whether a magistrate is authorized pursuant to Section 22-3-800 of the Code to suspend a sentence imposed on a criminal defendant upon the condition that the defendant provide a specified number of hours of public service. You also asked what recourse a court would have if the defendant failed to comply with the sentence.

Included in the recently-enacted "Omnibus Criminal Justice Improvements Act of 1986", R513, is Section 24-23-115. Such provision states in part:

... (e)xcept as otherwise provided by law, magistrate's and municipal courts may require defendants convicted of a criminal offense to perform public service work without pay for an agency of state, county, municipal, or federal government or for a nonprofit organization as a condition of suspension of sentence. This suspension of sentence shall include the number of hours of public service work to be performed not to exceed fifty hours.

The Board of Parole and Community Corrections shall establish by regulation pursuant to the Administrative Procedures Act a definition of the term 'public service work', and a mechanism for supervision of persons performing public service work....

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Inasmuch as this new provision expressly provides detailed authorization for the imposition by a magistrate of a sentence of public service work, it appears that a construction of Section 22-3-800 in such regard is unnecessary. I would only add that such sentence should not be imposed as to a defendant who committed an offense prior to the effective date of the omnibus crime act, June 3, 1986.

As to what recourse a court would have if a defendant failed to comply with such a suspended sentence, I would advise that a bench warrant be issued and the defendant be brought back before the court. At such time, the defendant would be obligated to pay any suspended fine or serve the sentence originally suspended. See: S. C. Bench Book for Magistrates, III-101 - III-103.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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