

The State of South Carolina



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September 8, 1986

Motte L. Talley, Staff Attorney
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Dear Mr. Talley:

In a letter to this Office you questioned whether a magistrate has the authority to dismiss a fraudulent check case within the jurisdiction of the court of general sessions. As to such question, you referenced Section 34-11-70 of the Code which states:

- (b) (a)ny court, including magistrate's, may dismiss a case under the provisions of this chapter for want of prosecution ... Unless waived by the court, the party applying for the warrant shall notify, orally or otherwise, the court not less than twenty-four hours prior to the date and time set for trial that full restitution has been made in connection with such warrant and such notification shall relieve that party of the responsibility of prosecution.
- (c) Any court, including magistrate's, may dismiss any prosecution initiated pursuant to the provisions of this chapter, on satisfactory proof of restitution and payment by the defendant of all administrative costs....

Pursuant to Section 34-11-90 of the Code, if the amount of the check alleged to be fraudulent is two hundred dollars or less, such case shall be tried exclusively in the magistrate's court.

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If the amount of the check is over two hundred dollars, such case shall be tried in the court of general sessions or any other court having concurrent jurisdiction.

It is a general rule of statutory construction that statutes should be construed sensibly so as to avoid absurd results. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). See also: 2A Sutherland Statutory Construction, Section 45.12. Moreover, statutes in pari materia or relating to the same subject matter should be construed together so that each is explanatory of the other. Fishburne et al. v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934); Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Consistent with such, construing Sections 34-11-70 and 34-11-90 together, it appears that a magistrate would not be authorized to dismiss a fraudulent check warrant that is within the trial jurisdiction of the court of general sessions. To conclude otherwise would result in the situation of a magistrate being able to dismiss a case that he would not have jurisdiction to try.

Moreover, such conclusion is consistent with the lack of final authority of a magistrate as to a preliminary hearing held for a case not triable by the magistrate. Pursuant to Rule 104(9) of the Criminal Practice Rules, if a magistrate does not find probable cause at the conclusion of a preliminary hearing, the defendant shall be discharged. However, such rule further provides that such discharge shall not prevent the State from initiating another prosecution for the same offense. Therefore, if it was to be concluded that a magistrate could dismiss pursuant to Section 34-11-70 the prosecution of a fraudulent check case triable in the court of general sessions, he would have authority that would be inconsistent with the dispositional authority he has as the result of a preliminary hearing.

Also, procedurally, it would appear inappropriate for a magistrate to retain authority to dismiss a case triable in general sessions court. To indicate otherwise could result in situations where a case which has been scheduled for trial in the general sessions or which has even entered the trial stage being dismissed by a magistrate. As referenced above, pursuant to Section 34-11-70(b) a party may be relieved of the responsibilities of prosecution in a fraudulent check case if the court is notified not less than twenty-four hours prior to the date and time set for trial that restitution has been made.

Therefore, to avoid inconsistencies in a magistrate's authority such as those referenced above, Sections 34-11-70 and 34-11-90 should be construed together with the conclusion that

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magistrates are not authorized to dismiss a fraudulent check warrant that is within the jurisdiction of the court of general sessions. If there are any questions, please advise.

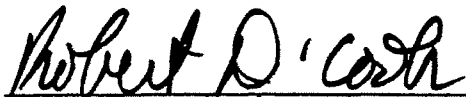
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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