

1984 S.C. Op. Atty. Gen. 273 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-120, 1984 WL 159927

Office of the Attorney General

State of South Carolina

Opinion No. 84-120

October 10, 1984

*1 George A. Markert

Assistant Director

South Carolina Court Administration

Post Office Box 50447

Columbia, South Carolina 29250

Dear George:

In a letter to this Office you questioned whether ministerial magistrates as authorized by [Section 22-2-40, Code of Laws of South Carolina](#), 1976, as amended, may hear proceedings pursuant to newly-enacted [Sections 20-4-10 et seq., Code of Laws of South Carolina](#), 1976, as amended, [Protection from Domestic Abuse Act] and issue orders of protection pursuant to such provisions. Pursuant to such, legislation, a magistrate is authorized to issue an order of protection to protect an abused person under limited circumstances.

Section 20-4-30, [supra](#), specifically states:

‘(t)he Family Court has jurisdiction over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the . . . [petition for an order of protection] . . . may be filed with a magistrate. The magistrate may issue an order of protection granting only the relief provided by Section 20-4-60(a)(1).’

Construing Section 20-4-50, [supra](#), it is clear that the orders of protection are not issued ex parte but are only issued after a hearing.

[Section 22-2-40, supra](#), provides for the designation of particular magistrates as ministerial magistrates ‘. . . for the purpose of carrying out the following responsibilities.’ Such specified responsibilities are issuing criminal warrants, approving and accepting bonds in criminal matters, ordering the release of prisoners after their bonds have been posted, and transferring such warrants and bonds to a magistrate with proper jurisdiction.¹ As is obvious, by statute, the specified responsibilities of such ministerial magistrates are limited to criminal cases.

As described by you, the hearing held prior to the issuance of an order of protection pursuant to Section 20-4-50, [supra](#), is a civil proceeding. Section 20-4-30, [supra](#), as indicated, authorizes a magistrate to issue an order of protection granting only the relief provided by Section 20-4-60(a)(1). Such latter section states that such orders are limited to ‘(t)emporarily enjoining the respondent from abusing, threatening to abuse, or molesting petitioner . . .’ Referencing such, this Office is in agreement with your description of such proceedings as being civil in nature. Generally, a criminal action is defined as a prosecution by the State against a party charged with an offense for the punishment of such offense. [See: Section 17-1-10, Code of Laws of South Carolina](#), 1976. Pursuant to [Section 15-1-120, Code of Laws of South Carolina](#), 1976, all actions not criminal are civil.

As indicated, pursuant to [Section 22-2-40, supra](#), the statutorily defined duties of ministerial magistrates all involve the exercise of criminal jurisdiction and obviously could not be construed to include the type proceedings set forth in Section 20-4-30, [supra](#). Referencing such, it is the opinion of this Office that ministerial magistrates are not authorized to hear civil proceedings pursuant to [Sections 20-4-10 et seq.](#) nor issue orders of protection pursuant to such provisions.

*2 If there are any further questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

Footnotes

- 1 Such duties are similar to those of ministerial recorders in municipal courts. Pursuant to [Section 14–25–115, Code of Laws of South Carolina](#), 1976, as amended, ‘ministerial recorders shall have the power to issue summonses, subpoenas, arrest warrants, and search warrants in all cases arising under the ordinances of the municipality, and in criminal cases as are now conferred by law upon magistrates, but shall have no other judicial power.’
- Also, pursuant to Section 14 –25–45, Code of Laws of South Carolina, 1976, as amended, municipal courts have no civil jurisdiction.
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