

1981 WL 157916 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 14, 1981

*1 Sheriff James O. Freeman
Hampton County Law Enforcement Center
P. O. Box 633
Hampton, SC 29924

Dear Sheriff Freeman:

In a letter to this office, you questioned whether there is any authority for the use of a county summons ticket by the Hampton County Sheriff's Department in citing the arrest of individuals for minor offenses, such as disorderly conduct. I am interpreting your request to mean that an arrest warrant would not be issued in addition to such county tickets.

Please be advised that I am unaware of any authority for the utilization of a county summons ticket as described above. A valid charging paper is essential for a magistrate to have jurisdiction to consider a criminal case. [Section 22-3-710, Code of Laws of South Carolina](#), 1976, states:

(a)ll proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.

This office in a previous opinion, 1970 Op. Att'y Gen. No. 3845, p. 77, held that:

where an arrest has been made without a warrant, the obtaining of an arrest warrant is necessary to vest a magistrate's court with jurisdiction over the offense as charged—exception in case of an official summons.

Examples of such official summonses previously recognized are the uniform traffic ticket, as provided by [Section 56-7-10, Code of Laws of South Carolina](#), 1976, the official summons of the South Carolina Wildlife and Marine Resources Commission, as provided by [Section 50-3-410, Code of Laws of South Carolina](#), 1976, and the official summons of the South Carolina Alcoholic Beverage Control Commission, as provided by [Section 61-13-836, Code of Laws of South Carolina](#), 1976, as amended. Such sections specifically provide that service of such summonses vest a magistrate's court with jurisdiction to hear and dispose of the charge for which the summons was issued.

This office in an opinion dated April 27, 1977, stated:

when an individual is arrested for a misdemeanor violation other than a traffic offense, . . . , the criminal offense may not be properly disposed of by the Court unless and until an arrest warrant has been issued and served on the arrestee or is in the possession of the magistrate when the trial is held. The warrant serves a variety of purposes. It informs the arrested person of the charge against him. A warrant is necessary in cases triable by a magistrate because the warrant constitutes the charging paper, and the defendant must be informed of the charges against him.

Therefore, as to all nontraffic criminal offenses, an arrest warrant must be issued prior to the matter coming to trial. Again, there is no authority for any type county summons ticket to be used in lieu of an arrest warrant.

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson

*2 Assistant Attorney General

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