

1982 WL 189333 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1982

**\*1 RE: Jurisdiction of Magistrate's Court to Order Capacity Evaluation Under [§ 44-23-410, South Carolina Code of Laws, 1976](#)**

Charles D. Barnett, Ph.D.  
Commissioner  
South Carolina Department of Mental Retardation  
2712 Middleburg Drive  
Post Office Box 4706  
Columbia, South Carolina 29240

Dear Dr. Barnett:

In a letter to this office you requested an opinion as to whether a magistrate's court has jurisdiction, pursuant to [§ 44-23-410, Code of Laws of South Carolina](#), 1976, to order the evaluation of an individual to determine his mental capacity to stand trial. Such provision states in part:

'[w]henever a judge of the circuit court, county court, or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall . . . (order an examination).'

As is obvious, such section does not specifically authorize a magistrate to order such an examination. Furthermore, it is a rule of statutory constitution that:

'[w]here the language of the statute is plain and unambiguous and conveys a clear and definite meaning . . . there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning.' [Wynn v. Doe](#), 255 S.C. 509 at 512, 180 S.E.2d 95 (1971).

In the opinion of this office, the language in [§ 44-23-410, supra](#), is clear and unambiguous and, therefore, does not permit an interpretation that would authorize a magistrate to order an evaluation to determine mental capacity to stand trial.

As to your statement that some magistrates have asserted that upon the abolishment of county courts generally, the jurisdiction of such courts shifted to the magistrate's court, I am unable to find any support for such argument. While [§ 14-2-50, Code of Laws of South Carolina](#), 1976, as amended, in providing for the abolishment of the county courts on July 1, 1979 provided that ' . . . the jurisdiction of the office devolved upon the unified court system', and while the magistrates' courts are a part of this State's unified judicial system, it does not appear that the provisions of [§ 44-23-410, supra](#), which as earlier stated, are quite clear and specific, should be construed to presently include the magistrates' courts in this instance. Furthermore, inasmuch as the jurisdictional limits of magistrates' courts are clearly provided by statute, [§ 14-2-50](#) should not be considered as being any general grant of additional jurisdiction for such courts.

While [§ 44-23-410, supra](#), does not grant a magistrate's court jurisdiction to order an evaluation to determine mental capacity to stand trial, other provisions exist which could protect individuals determined to be mentally ill or mentally retarded. [Section 44-23-220, Code of Laws of South Carolina](#), 1976, prohibits an individual who is mentally ill or mentally retarded from being

incarcerated in any jail. Such provision authorizes such individuals, upon proper circumstances, to be admitted to a mental health or retardation facility. Also, [§ 44-17-410, Code of Laws of South Carolina](#), 1976, as amended, authorizes the emergency admission of an individual, who is considered to be mentally ill and likely to cause serious harm to himself or others, to a mental health facility.

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

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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