

1982 WL 189336 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 22, 1982

**\*1 RE: Proposed Central Court for Handling Fraudulent Checks**

Charles Richard Stewart  
Staff Attorney  
Office of Greenville County Attorney  
14-A Courthouse Annex  
Greenville, South Carolina 29601

Dear Mr. Stewart:

In a letter to this office you questioned the legality of a proposed central magisterial court for handling fraudulent checks in Greenville County. You also enclosed a memorandum discussing such system generally. The memorandum provides that: 'The proposal provides for a central court to process all aspects of fraudulent check charges. The office would be staffed by two clerical positions and one magistrate who would rotate from existing ranks. Other magistrates would retain the authority to handle bad checks, if citizens preferred to work with a magistrate more conveniently located.'

As to the funding of such court, it has been proposed that the businesses which take checks from the general public would be asked to contribute a designated amount based on the size of the retail operation. It has been estimated that \$125,000.00 will be necessary to fund the court.

You have specifically questioned whether the proposed court would violate Article V of the State Constitution which mandates a uniform court system in this State. Referencing the decision of the South Carolina Supreme Court in [State ex rel. McLeod v. Crowe](#), 249 S.E.2d 772 (1978), you also asked whether such court could be privately funded as proposed.

As to the latter question dealing with funding, it appears that the proposal whereby the funds necessary to begin the referenced central court will be collected from the businesses which take checks from the public could potentially be interpreted as depriving a defendant of due process. In [Crowe, supra](#), the State Supreme Court ruled that magistrates may not accept fees derived from their performance as judicial officers. The basis for such ruling was the determination that allowing magistrates to receive such fees violated the due process clauses of the State and Federal Constitutions since such conferred upon magistrates a pecuniary interest in the subject matter of a proceeding before them. The Court referenced that in [Tumey v. Ohio](#), 273 U.S. 510, 475 S.Ct. 437, 71 L.Ed. 749, the United States Supreme Court determined that a judge should be disqualified from sitting in any case where he has a pecuniary interest by way of fees paid by any of the litigants. Such also detracted from their standing as neutral and detached hearing officers.

Referencing [Crowe, supra](#), it may be argued that the proposed central court could potentially deprive a defendant of due process inasmuch as the court which hears a particular fraudulent check case was funded by businesses which initiate criminal cases in such court. An argument may be made that the magistrate presiding over such court is not sufficiently neutral and detached. Therefore, it does not appear that this office could approve such a suspect funding arrangement.

**\*2** Inasmuch as the magistrates' courts are a part of this State's unified judicial system, you have questioned whether the proposed central magisterial court would violate the constitutional mandate of uniformity in the magisterial court system. In

examining your proposed central court, certain other matters must also be reviewed. Pursuant to [§ 22-2-170 of the 1976 Code of Laws](#), as amended, all magistrates have county-wide jurisdiction. However, such section also provides that: 'criminal cases shall be tried in the jury area where the offense was committed, subject to a change of venue . . . '

Included in the Order of the Chief Justice dated December 30, 1981, which designates certain magistrates as Chief Judges, is the grant of authority to such chief judges to: 'provide for the orderly assignment of any case(s) within the jurisdiction of the magistrate court to any magistrate of the county, . . . '

As described in the memorandum accompanying your letter, it appears that the central court is to be established primarily for administrative reasons so that fraudulent check cases may be more efficiently handled. Without question, inasmuch as all magistrates have county-wide jurisdiction, any magistrate within the County potentially would have jurisdiction to issue warrants and hear cases arising in the County. As previously referenced, the Chief Justice has also authorized the assignment of cases by the Chief Magistrates within a particular county. Furthermore, as described, the proposed central court concept does not attempt to deprive other magistrates of the County of jurisdiction to handle fraudulent check cases. Such is distinguishable from the situation cited in Crowe, supra, where as to the check clearing houses examined, the Court found the statutes authorizing such to be unconstitutional as violating Article V of the Constitution. The magistrates operating such check clearing houses possessed county-wide jurisdiction while other magistrates in their respective counties did not. Also, a matter favorable to the proposed central court is the fact that such court is not to be statutorily established. Therefore, the argument may be more easily made that the handling of fraudulent check cases in the manner proposed is more of an administrative matter and that the functioning of the court is consistent with the Order of the Chief Justice that cases may be assigned within a county. However, as previously referenced, as to any case brought in the county, pursuant to statute, a defendant has the right to have such case tried in the jury area where the offense was committed. (This office reserves any comment as to whether such right must be raised by a defendant or is automatic.)

Referencing the above, it does not appear that the functioning of the central court as proposed in the memorandum would violate Article V as previously interpreted by the Supreme Court. However, as to the matter of funding, as previously referenced, such proposed manner is suspect and is not recommended.

\*3 If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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