

1980 WL 120607 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 15, 1980

***1 RE: Change of Venue in Magistrates Court [South Carolina Code Section 22-3-920](#)**

Lawrence A. Dodds, Jr., Esquire
Bailey and Buckley
Post Office Box 881
Charleston, South Carolina 29402

Dear Mr. Dodds:

In a letter to this Office you referenced a question arising from a landlord-tenant dispute concerning the town of Ravenel. You indicated that a landlord is attempting to evict the town of Ravenel from the premises where the town has constructed its police and fire stations. The factual situation as indicated in your letter was that Magistrate Tumbleston whose office is located in Ravenel issued a Notice to Quit and Affidavit requiring the town of Ravenel to vacate the referenced premises within ten (10) days. Following a demand by the town of Ravenel for a jury trial, the landlord applied for a change of venue, which was granted by Magistrate Tumbleston, and the case was transferred to Magistrate Guy Chaplin of Meggett, South Carolina, the nearest magistrate to Judge Tumbleston. You indicated that the landlord then applied for an additional change of venue to have the case transferred to Magistrate John Chalmers whose office is located in an area known as West of the Ashley. You referenced that Judge Chaplin, noting that under [Section 22-3-920, Code of Laws of South Carolina](#), 1976, two changes of venue by one party is not allowed, rejected the request for a change of venue but disqualified himself and transferred the matter to Judge Chalmers. You indicated that Judge Chalmers is the nearest qualified magistrate to Judge Chaplin, but is not the nearest qualified magistrate to Judge Tumbleston. According to you, the nearest magistrate to Magistrate Tumbleston, excluding Judge Chaplin, is Judge John O. Johnson, located on Highway 174, Yorges Island, Charleston County, South Carolina.

You state that it is your position that inasmuch as Judge Tumbleston transferred the matter to Judge Chaplin and Judge Chaplin disqualified himself, the case should remain in the hands of Judge Tumbleston who is required, if a change of venue is granted, to transfer the matter to the next nearest qualified magistrate to him and not to the next nearest magistrate to Judge Chaplin. You indicate that it is your position that the matter should be transferred then to the next nearest qualified magistrate, Judge John O. Johnson.

Please be advised that this Office is in agreement with your position indicating that the proper magistrate to hear the case following a grant of the motion for change of venue by Magistrate Tumbleston and the disqualification of Judge Chaplin would be Magistrate Johnson, if in fact he is the next nearest qualified magistrate. It appears that the transfer of the matter to Judge Chalmers by Judge Chaplin, following his disqualification, was improper inasmuch as Judge Chalmers is not the nearest qualified magistrate to Judge Tumbleston. This results from a review of [Section 22-3-920, *supra*](#), which states in part that:

***2** '(w)henever in a case in the court of a magistrate (a) either party in a civil case . . . shall file with the magistrate issuing the . . . summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the . . . summons . . .'

If there are any questions concerning the above, do not hesitate to contact me.

With best wishes, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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