

1980 WL 120590 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 9, 1980

*1 Honorable Wendell O. Adams
Magistrate of Colleton County
Post Office Box 1152
Walterboro, South Carolina 29488

Dear Judge Adams:

I am writing to answer the questions you asked in your letter of December 17, 1979, and in your phone conversation with me of January 3, 1980.

Your first two questions were basically whether [§ 20-7-40\(A\), Code of Laws of South Carolina \(1976\)](#), as amended, creates an offense triable in General Sessions Court or Family Court. It is the opinion of this Office that [§ 20-7-40\(A\)](#) describes a criminal offense triable in General Sessions Court. The penalty in the section provides for up to one (1) year imprisonment and up to a Fifteen Hundred (\$1500.00) Dollar fine. Thus, a violation of this section would be triable in General Sessions Court as the Family Court does not have jurisdiction to try criminal offenses. The offense would come under the General Sessions Court, not the Magistrate's Court, because of the severity of the penalty. See, [§ 22-3-550](#).

Your third question was whether a 'divorced spouse' qualifies as a 'spouse' under [§ 20-7-40\(A\)](#). The section does not mention 'ex-spouse' or 'divorced person'. It is the opinion of this Office that [§ 20-7-40\(A\)](#) does not apply to a divorced person seeking alimony. Alimony is a substitute for the support normally incident to the marital relationship. [Nienow v. Nienow, 268 S.C. 161 232 S.E. 2d 504 \(1977\)](#). Child support is, of course, quite different and [§ 20-7-40\(A\)](#) does not prohibit an 'ex-spouse' from seeking support for a child. The section is restricted to support for spouses and support for children. Penal provisions are strictly construed so the section would not apply to ex-spouses seeking support for themselves.

Your fourth question was whether the existence of a divorce decree precludes you from issuing a warrant under this section. The opinion of this Office is that a divorce decree would never preclude you from issuing a warrant assuming probable cause had been shown by the evidence before you. Mere existence of a divorce decree would not preempt your jurisdiction. Your jurisdiction is independent of the Family Court, assuming there exists probable cause that [§ 20-7-40\(A\)](#) has been violated.

I hope this letter has been helpful to you.

Sincerely,

Eugene W. Yates, III
Assistant Attorney General

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