

1979 S.C. Op. Atty. Gen. 20 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-8, 1979 WL 29014

Office of the Attorney General

State of South Carolina

Opinion No. 79-8

January 16, 1979

**\*1 SUBJECT: Magistrates, Municipal Courts**

Although possessing concurrent jurisdiction with city recorders, there is no authority which mandates that magistrates should issue warrants, conduct trial proceedings, and hold preliminary examinations for municipal cases triable in general sessions court inasmuch as city recorders have jurisdiction to perform such duties.

TO: Neal Forney  
Assistant Director  
South Carolina Court Administration

QUESTION:

Should Greenville County magistrates issue warrants, conduct bail proceedings, and hold preliminary examinations for municipal courts in Greenville County?

AUTHORITIES:

[Section 14–25–970, Code of Laws of South Carolina](#), 1976; Opinions dated February 16, 1978 and September 23, 1978; [State v. Blue](#), 215 S.E. 2d 905 (1975).

DISCUSSION:

In answering your question, I presume you mean whether such magistrates should perform the referenced duties for cases involving arrests made within the city limits for offenses committed within the city limits which are triable in general sessions court. Furthermore, the response provided is in reference to recorders presiding over municipal courts established pursuant to [Section 14–25–910 of the 1976 Code](#) of Laws.

Please be advised that this Office is unaware of any statutory provisions which mandate that a magistrate must perform the referenced duties for such city cases. As you are aware, pursuant to [Section 14–25–970 of the 1976 Code](#) of Laws a municipal court in a municipality of 1,000 or more in population

‘ . . . shall have jurisdiction to try and determine all cases arising under the ordinances of the city in which the court is established and generally shall have all such judicial powers and duties as are now conferred upon the mayor of such city, either by its charter or by the laws of this State. The municipal court shall also have all such powers, duties and jurisdiction in criminal cases made under municipal or State law as are now conferred by law upon the magistrates appointed and commissioned for the county in which the court is established, except that such court shall not have the authority of a magistrate to appoint a constable.’

Therefore, the recorder for a municipal court would be authorized to perform those duties outlined above. Furthermore, the preamble to Act. No. 249 of 1975 which added the words ‘made under municipal or State law’ in the second sentence of [Section 14–25–970](#) states:

Whereas, the General Assembly has determined that the enactment of Section 15–1010 of the 196i Code was intended to confer upon municipal courts the same jurisdiction in criminal matters as is provided by law for magistrates' courts including the power to issue arrest warrants and search warrants, to try cases under municipal and State law within their jurisdictional penalty limits, to hold preliminary hearings and bind over to grand juries cases under State law beyond their penalty limits; . . .

\*2 It was stated that such was an attempt to clarify legislative intent.

Additionally, as to the ?? of a magistrate conducting bail proceedings for such cases, a previous opinion of this Office dated February 16, 1978, stated in reference to the refusal of Sumter County magistrates to set bail in criminal cases originating in the municipal court,

‘(I)t appears that their position is correct inasmuch as arrest warrants are commonly returnable to the issuing court for the settling of bonds. The Bail Reform Act specifies the procedures and conditions of release to be employed by the courts before which accused persons are brought to answer. Although that Act itself is silent as to municipal courts, it is nevertheless certain, in our opinion, that the subsequent action of the Legislature in amending [Section 14–25–970](#), *supra*, effectively conferred criminal jurisdiction upon the municipal courts and accordingly imposed the power and duty to set bail on defendants in accordance with the Bail Reform Act of 1969.’

Furthermore, as to the matter of preliminary hearing, a previous opinion of this Office dated September 23, 1976, stated that in the opinion of this Office,

‘. . . a municipal judge who issues an arrest warrant in a matter beyond his jurisdiction to try has a duty to hold a preliminary hearing when such is properly demanded, both under the language of Section 43–232 and because his failure or refusal to do so could prohibit prosecution of the charge in general sessions court.’

In addition to such, please be advised that authority for recorders issuing warrants and holding preliminary examinations for cases which originate within the city but are beyond the jurisdiction of the recorder to try is found in the decision of the South Carolina Supreme Court in [State v. Blue](#), [215 S.E.2d 905 \(1975\)](#). In that decision the Court stated that with reference to the authority granted municipal recorders by that section now codified as [Section 14–25–970](#) in the 1976 Code of Laws, (t)he jurisdiction conferred on Recorders, therefore, includes concurrent jurisdiction with magistrates to issue warrants for arrests within the city limits for offenses beyond their jurisdiction to try and . . . to sit as examining courts in such cases, where the offenses are committed within the corporate limits of the city. [215 S.E. 2d at 908](#).

Therefore, to answer your question specifically, while admitting that magistrates have concurrent jurisdiction with recorders, there does not appear to be any authority which specifically mandates that magistrates must perform those duties for city cases as outlined in your question. Instead, as indicated, municipal recorders are authorized to issue warrants, hold preliminary hearings, and conduct bail proceedings for such cases.

#### CONCLUSION:

A municipal recorder has jurisdiction to issue warrants, conduct bail proceedings, and hold preliminary examinations for cases which originate in the city but are beyond the jurisdiction of the recorder to try. There is no authority which mandates that a Greenville County magistrate must perform such duties for such cases.

\*3 Charles H. Richardson  
Assistant Attorney General

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