

1980 WL 120672 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 13, 1980

*1 George W. Percy, Jr., Esquire
Attorney at Law
101 North Howard Street
Landrum, South Carolina 29356

Dear Mr. Percy:

In a letter to this Office you asked several questions pertaining to municipal courts.

In response to your first question concerning the jurisdiction, geographically and substantively of the municipal court, [Section 14-25-970, Code of Laws of South Carolina](#), 1976, provides basically that a municipal court:

‘... 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.’

Enclosed is a copy of a previous opinion of this Office concerning a recorder's civil jurisdiction. As to the geographical limits of the recorder's court, a municipal court has jurisdiction over matters arising within the corporate limits of the municipality.

As to your question concerning the authority of a municipal recorder to suspend sentences and place individuals on probation, your attention is directed to [Sections 14-25-810, 14-25-980, and 14-25-990, Code of Laws of South Carolina](#), 1976, which provide suspension authority for recorders of municipalities of certain populations. [Section 22-3-800, Code of Laws of South Carolina](#), 1976, as amended, which delineates such authority for magistrates, would be applicable generally to municipal recorders not covered by the previously referenced sections. Such section also specifically provides that magistrates are without authority to place a person on probation. Therefore, municipal recorders are also without such authority to place individuals on probation except as provided by [Section 14-25-990](#) as to municipalities between 7800 and 7900 in population.

As to your question concerning the authority of a municipal recorder to permit a defendant to make periodic payments on any fine imposed, please be advised that [Section 17-25-350, Code of Laws of South Carolina](#), 1976, which authorizes scheduled payments for a fine, is applicable to a municipal court. Such section specifically provides that failure to comply with a payment schedule constitutes contempt of court.

As to your question concerning a defendant's right to a jury trial for an offense triable in a municipal court, clearly a defendant has such a right. As to your question concerning whether a defendant requesting a jury trial is required to pay a fee, I am unaware of any authority authorizing the payment of a fee.

*2 You have also asked who institutes proceedings where there is a forfeiture of a recognizance. Please be advised that [Section 17-15-170, Code of Laws of South Carolina](#), 1976, specifically provides for the Attorney General, the solicitor, or other person acting for the solicitor to institute such proceedings. As to who would institute criminal proceedings against a defendant who fails to appear after release, presumably any individual familiar with such failure to appear could serve as the affiant on an

arrest warrant charging such a violation. [Section 17-15-90, Code of Laws of South Carolina](#), 1976, provides the penalties for the offense of failing to appear after release.

As to your question of whether a recorder may issue an arrest warrant as to an offense he has jurisdiction to try, please be advised that pursuant to [Section 14-25-970, supra.](#), a municipal recorder is authorized to issue arrest warrants as to offenses committed within the corporate limits of the city as to cases not only within his jurisdiction to try but also as to cases within the jurisdiction of the court of general sessions. (See also [State v. Blue, 215 S.E.2d 905 \(1975\).](#))

As to your question concerning the form of commitment papers to be utilized when a defendant is sentenced to a term of imprisonment by a municipal recorder, enclosed please find a copy of the form utilized by the magistrates in this State in issuing a commitment. I suggest that after consulting with your city attorney you consider adapting such form for use by your court in such circumstances. As to where a defendant would be confined, [Section 17-25-90, Code of Laws of South Carolina](#), provides: ‘(a)ll persons convicted of any criminal offense whatsoever when the sentence imposed by the presiding judge is less than six months shall serve such sentence either in the county jail or municipal guardhouse or on the chain gang of the county in which such person was tried, convicted and sentenced or of a municipality therein; provided, that should it appear to the presiding judge that the person sentenced is a dangerous character or cannot be safely kept in the county, then the presiding judge shall order such person to be taken to the State Penitentiary.’

Hopefully the above is in full response to your inquiry.

With best wishes, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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