

1980 WL 120700 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 10, 1980

*1 Mr. James K. Wilson
Chief Chemist
S.C. Law Enforcement Division
P. O. Box 21398
Columbia, SC 29221

Dear Mr. Wilson:

In a letter to this office you questioned whether prior to SLED being required to furnish a breathalyzer machine for use during a trial in magistrate's court, must a court order be issued. You indicated that defense attorneys frequently request that such machines be brought to court which results in a considerable amount of inconvenience to your department inasmuch as not only are the machine's services temporarily lost but an expert is also sent to testify.

With regard to the above situation as to a case being tried in a magistrate's court, the magistrate generally lacks jurisdiction to compel SLED to furnish a breathalyzer machine or an expert who could testify as to the workings of the breathalyzer machine. The only statutory authority permitting a magistrate to compel testimony is [Section 22-3-930, Code of Laws of South Carolina, 1976](#). Such section states in part:

'(a)ny magistrate, on the application of any party to a cause before him, shall issue a summons citing any person whose testimony may be required in such cause to appear before him, at a certain time and place, not more than twenty miles from the residence of such witness, to give evidence.' (Emphasis added.)

As you can see, magistrates do not have wide powers to compel testimony. Furthermore, magistrates have only county-wide jurisdiction and therefore, generally, SLED would not be within the jurisdictional reach of a magistrate's court.

Referencing the above, even though a magistrate does not have general jurisdictional authority to require that SLED furnish a breathalyzer machine and an expert witness for the benefit of the defense at a criminal trial in his court, as to any such attempts by a magistrate to compel such, it is the recommendation of this office that such should not be routinely ignored. More properly, notice should be given to the prosecutor of the receipt of any process to compel testimony by SLED, which you indicate is typically presented as a subpoena. The prosecutor could then attempt to have any such subpoena quashed.

If there is anything further, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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