

1979 S.C. Op. Atty. Gen. 63 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-45, 1979 WL 29051

Office of the Attorney General

State of South Carolina

Opinion No. 79-45

March 12, 1979

***1 SUBJECT: Magistrates, Arrest Warrants, Bench Warrants**

A bench warrant issued by a magistrate may be executed only within the county of the issuing magistrate.

TO: Neal M. Forney, Jr.

Assistant Director

South Carolina Court Administration

QUESTIONS:

(1) When a bench warrant is sent to a foreign county should it be endorsed for execution by a magistrate of that county pursuant to [Section 22–5–190 of the 1976 Code](#) of Laws?

(2) If a person is arrested in a foreign county pursuant to a bench warrant, is a bond proceeding conducted for the arrested person pursuant to [Section 17–15–10, et seq. of the 1976 Code](#) of Laws?

AUTHORITIES:

[Section 22–5–190, Code of Laws of South Carolina](#), 1976; Ops. Att'y. Gen. dated October 31, 1978, and February 21, 1974.

DISCUSSION:

[Section 22–5–190](#) states in part that:

(a) magistrate may endorse a warrant issued by a magistrate of another county when the person charged with a crime in such warrant resides in or is in the county of the endorsing magistrate.

The endorsement of the warrant by the magistrate permits it to be executed in the county of the endorsing magistrate by the individual presenting it or any ‘special constable’.

Please be advised that as to your question concerning the necessity of endorsing a magisterial bench warrant for service in a foreign county, [Section 22–5–190](#) appears to relate to the endorsement and execution of an arrest warrant in a county other than the county of the issuing magistrate and should not be construed to authorize the endorsement and execution of a magisterial bench warrant in a county other than the county of the issuing magistrate. I am unaware of any statutory authority referencing the endorsement and execution of a magisterial bench warrant in a county other than the county of the issuing magistrate. As referenced in your requesting letter, an earlier opinion of this Office dated October 31, 1978, noted the distinction between arrest warrants and bench warrants. Furthermore, in an opinion dated February 21, 1974, from Mr. Coleman of this Office, it was referenced that as to a bench warrant issued by a municipal court judge, ‘such a bench warrant would be valid only within the limitations of the municipality . . .’ A similar finding would appear to be proper as to bench warrants issued by a magistrate.

Therefore, in the opinion of this Office, a bench warrant issued by a magistrate may be executed only within the county of the issuing magistrate. [Section 22-5-190](#) is irrelevant to the matter of magisterial bench warrants.

As to your second question, in light of the above discussion, a response appears to be unnecessary.

CONCLUSION:

A bench warrant issued by a magistrate may only be executed within the county of the issuing magistrate. The reference in [Section 22-5-190](#) to the endorsement of a warrant by a magistrate of a county other than the county of the issuing magistrate is irrelevant to magisterial bench warrants.

*2 Charles H. Richardson
Assistant Attorney General

1979 S.C. Op. Atty. Gen. 63 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-45, 1979 WL 29051

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.