

1979 WL 42857 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 12, 1979

***1 RE: Aiken County Ordinance No. 78-3-30**

Mr. Neal Forney
Assistant Director
S. C. Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Forney:

You have directed to the attention of this Office Ordinance No. 78-3-30 of Aiken County which establishes a uniform bonding system for Aiken County and according to the ordinance is designed to 'facilitate administrative and auditing facilities in the bail and recognizance system.' It appears that certain articles of the ordinance, namely Articles VII through XI, appear to require administrative procedures to be performed by Aiken County magistrates which are unique to the County. You have specifically asked whether such ordinance is constitutional.

It appears from the ordinance that reliance is placed upon Act No. 283 of 1975, the 'home rule' act, as authority for such ordinance. However, please be advised that in the opinion of this Office, a review of Act No. 283 indicates that such Act does not provide authority for such an ordinance.

Furthermore, as you pointed out in your letter, such referenced articles conflict with the provisions of Article V of the South Carolina Constitution. In the recent decision of the South Carolina Supreme Court in State of South Carolina ex rel. McLeod v. Crowe, Opinion No. 20805, filed November 13, 1978, the Court held that magisterial courts are included in the State's unified judicial system. The Court expressly stated that 'magistrates' courts are a part of the unified judicial system, mandated by [Section 1 of Article V](#) and, therefore, are included within the requirements for uniformity prescribed by that Article.'

The Court in Crowe held that [Section 23 of Article V](#), the section which provides for magisterial courts in this State, interpreted in conjunction with [Section 1 of Article V](#) requires that magisterial fees and territorial jurisdiction be uniform throughout the State. The ordinance as drafted appears to be in conflict with the mandate of uniformity inasmuch as certain administrative procedures are required to be performed by Aiken County magistrates which are not required of other magistrates in this State.

Also, [Section 4 of Article V of the Constitution](#) states in part that the Supreme Court shall make rules governing the administration and, subject to statutory law, practice and procedure in all courts of this State. The referenced ordinance as passed by the Aiken County Council appears to be in conflict with such constitutional provision inasmuch as those referenced articles are an attempt by Aiken County to require certain administrative procedures not required of other magistrates in this State to be performed by Aiken County magistrates. Therefore, such ordinance is an attempt to regulate certain judicial procedures of the magisterial courts in Aiken County by the Council and is not in keeping with [Article V, Section 4](#).

In light of the above discussion, those provisions cited which require certain administrative procedures to be performed by Aiken County magistrates which are unique to the County, are invalid inasmuch as they violate Article V of the South Carolina Constitution and especially its mandate for a uniform court system.

*2 However, please be advised that the procedures detailed in the referenced ordinance requiring a bondsman to execute the forms reflecting total outstanding liability may be a good method of determining the bondsman's qualification and might in some instances be required by a magistrate on his own initiative before approving the bondsman. Also, such might be an appropriate idea for state-wide legislation or application.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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