

1980 WL 120781 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 22, 1980

*1 Mr. John Patrick
Assistant Director
South Carolina Court Administration
P. O. Box 11788
Columbia, South Carolina 29211

Dear John:

In a letter to this office, you raised a question regarding the application of the time specifications for requesting a preliminary hearing pursuant to the recently enacted Act No. 393 of 1980. Such Act provides that a defendant must request a preliminary hearing within twenty days of his bond hearing,

' . . . provided, however, that if such twenty-day period expires on a date prior to the convening of the next term of General Sessions Court having jurisdiction then the defendant may wait to make such request until a date at least ten (10) days before the next term of General Sessions Court convenes . . . '.

Referencing such Act you asked as to those instances in which the twenty-day period expires prior to the convening of the next term of General Sessions Court, does the defendant have the option of making his request within twenty days of the bail proceeding, or must he make his request within ten days before the next term of court in such circumstances.

In the opinion of this office, all defendants must be afforded at least the twenty-day period provided by the Act. It appears that the proviso permitting a defendant to wait until ten days prior to the next term of General Sessions Court to request a preliminary hearing, which is generally applicable in those instances where the referenced twenty-day period expires prior to the convening of the next term of General Sessions Court, should be interpreted as permissive and not mandatory with the result that all defendants must be afforded the twenty-day period provided to request a preliminary hearing. The statute should not be read as indicating that in all instances where the twenty-day period expires, a defendant must request a preliminary hearing within ten days prior to the next term of General Sessions Court. Such an interpretation could work in some situations to a defendant's disadvantage in that a defendant in some instances could be afforded considerably less than twenty days to request a preliminary hearing. In reaching such a conclusion, reference is particularly made to that portion of the proviso which indicates that a defendant 'may wait' to request a preliminary hearing until ten days prior to the term of General Sessions Court. Furthermore, as you are aware, the legislation which eventually became Act 393 originally was drafted to provide a twenty-day period in which to request a preliminary hearing as to all defendants. However, such legislation was amended to add the section providing the ten day period in those counties where General Sessions Court is held less frequently.

In your requesting letter, you referenced a hypothetical factual situation where a defendant is admitted to bail on July 1 and the next term of General Sessions Court begins July 22, 1980. Obviously, the twenty-day period would expire prior to the convening of such next term of General Sessions Court. However, if the proviso is read as mandating that the request for a preliminary hearing be made at least ten days prior to the next term of General Sessions Court in such instances where the twenty-day period expires, a defendant in such a hypothetical situation would be required to make his request for a preliminary hearing no later than July 12, 1980. Therefore, a defendant in such a situation would have only a twelve-day period in which to request a preliminary hearing, while typically defendants in practically all other instances would have at least twenty days to make a request for a preliminary hearing. Inasmuch as the statute should be interpreted as providing a minimum twenty-day

period from the date of the bond hearing in which to request a preliminary hearing, in the hypothetical situation presented, the defendant must be afforded twenty days from his July 1 bond hearing to request his preliminary hearing.

*2 Therefore, to reiterate, it appears it was intended that all defendants must be afforded a minimum of twenty days from the date of their bond hearing to request a preliminary hearing. To read otherwise would appear to be overly restrictive and not in keeping with the intent of the Legislature.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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