

1980 WL 120789 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1980

\*1 Mr. Frank Sheely  
Chief of Police  
Conway Police Department  
Laurel Street  
Conway, South Carolina 29526

Dear Chief:

I am in receipt of your request for an Opinion from this Office, dated July 1, 1980. The issue of concern to you is whether or not a City Recorder who issues a warrant is also required to conduct the preliminary hearing, or whether a Magistrate is authorized to conduct the preliminary hearing, although he did not issue the warrant.

An Opinion of this Office issued on July 16, 1979, is responsive to the issue in question. Magisterial Courts and Municipal courts exercise concurrent jurisdiction over state criminal offenses, including the conduct of preliminary hearings. [State v. Blue, 215 S.E. 2d 905 \(1975\)](#).

In the case of [State v. Blue, supra](#), the Court stated that with reference to the authority granted Municipal Recorders by [Section 14-25-970, Code of Laws of South Carolina, \(1976\)](#):

The jurisdiction conferred on Recorders, therefore, includes concurrent jurisdiction with Magistrates to issue warrants for arrests within the city limits for offenses beyond their jurisdiction to try and . . . to sit as examining courts in such cases, where the offenses are committed within the corporate limits of the city. [215 S.E. 2d at 908](#).

Although Magistrates have concurrent jurisdiction with Recorders, there is no authority which specifically mandates that Magistrates must perform those duties for cases which originate in the city, under warrants issued by the City Recorder.

To the contrary, the Supreme Court of South Carolina, in an Order issued on October 31, 1979, ruled that the court in which the action is initiated (e.g., court issuing the arrest warrant) shall perform all necessary judicial functions regarding the case (e.g., conducting trial or holding preliminary hearings). Therefore, as a general matter, the transfer of cases between the Magisterial Court and the Municipal Court is prohibited.

It is therefore the Opinion of this Office that the court which issues the warrant must conduct the preliminary hearing.

Sincerely,

Wayne G. Carter, Jr.  
Staff Attorney

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