

1977 S.C. Op. Atty. Gen. 129 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-155, 1977 WL 24497

Office of the Attorney General

State of South Carolina

Opinion No. 77-155

May 13, 1977

*1 Magistrates may not amend orders of release for crimes which are beyond their trial jurisdiction after the pertinent papers have been transmitted to the Court of General Sessions.

TO: Neal Forney
Assistant Director
South Carolina Court Administration

QUESTION PRESENTED:

Can a magistrate amend an order of release that he has issued pursuant to Section 17–300, *et seq.*, of the 1962 Code of Laws of South Carolina, as amended, if the offense is within the trial jurisdiction of the Court of General Sessions and the papers pertaining to the case have been transmitted to the clerk of court pursuant to Section 43–234 of the 1962 Code of Laws of South Carolina, or does the Court of General Sessions have exclusive jurisdiction?

STATUTES INVOLVED:

Section 43–231 of the 1962 Code of Laws of South Carolina.

Section 43–241 of the 1962 Code of Laws of South Carolina.

Section 43–245 of the 1962 Code of Laws of South Carolina.

Section 17–300.4 of the 1962 Code of Laws of South Carolina, as amended.

DISCUSSION:

You have asked whether a magistrate, after having issued an order of release and transmitted the pertinent papers to the Court of General Sessions, retains jurisdiction to amend such an order. It is our opinion that he does not.

Section 43–231 of the 1962 Code of Laws of South Carolina provides that, in criminal matters beyond their jurisdiction to try, magistrates shall sit as examining courts and commit, discharge, and, excepting capital cases, recognize persons charged with such offenses. Section 43–241 further provides that magistrates may admit such persons to bail. Having admitted a person to bail, the magistrate must thereafter forward the papers to the appropriate clerk of the Court of General Sessions at least ten (10) days before the next term of that Court. Section 43–245.

Although Section 17–300.4 clearly permits amendment of an order of release after notice and hearing, that section necessarily contemplates jurisdiction being then presently vested in the magistrate's court. However, after transmittal of the pertinent papers to the Court of General Sessions, the magistrate no longer has jurisdiction to amend such an order inasmuch as the matter has been effectively transferred out of his jurisdiction. 22 C.J.S. Criminal Law, Section 152(e), pages 407–408. Therefore,

following transfer of the case to the Court of General Sessions, any amendment of an order of release must be addressed to the Court of General Sessions in its exclusive jurisdiction.

CONCLUSION:

Therefore, it is the opinion of this office that magistrates may not amend orders of release for crimes which are beyond their trial jurisdiction after the pertinent papers have been transmitted to the Court of General Sessions.

Richard P. Wilson

Assistant Attorney General

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