

1977 S.C. Op. Atty. Gen. 335 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-406, 1977 WL 24742

Office of the Attorney General

State of South Carolina

Opinion No. 77-406

December 27, 1977

\*1 J. M. McLendon, Esquire  
Messrs. McLendon and Sloan  
111 Witcover Street  
Post Office Box 1096  
Marion, South Carolina 29571

Dear Mr. McLendon:

Your letter of December 7, 1977, to the Attorney General has been referred to me for reply.

You have posed two questions regarding the appearance of defendants before the Marion City Recorder's Court. In the first situation, you asked whether or not the city is correct in its procedure which requires persons arrested for traffic violations to accompany the arresting officer to City Hall in order to post bond. In this regard, please be advised that only highway patrolmen, game wardens, and certain other law enforcement officers, are especially authorized by law to receive bond money directly without taking the defendant before a proper judicial authority. All other law enforcement officers, including municipal officers, must comply with the general duty to take an arrested person before a proper judicial officer as soon as practicable. Therefore, the wisdom and propriety of the city's current practice is, in my opinion, manifestly certain.

The other question you present concerns the proper process to be issued by the recorder's court for defendants who previously posted no bond and thereafter failed to appear at the scheduled time for trial. The most common practice in such situations in this State is for the court to issue a bench warrant whereby the defendant thereafter is physically brought before the court to answer the noticed charge. We believe this practice to be both an appropriate and effective method of proceeding in such situations.

However, the suggested practice of finding absent defendants in contempt of court for failure to appear presents problems. As I understand the law in this regard, the recorder's power to punish for contempt in such instances is derived from that bestowed upon magistrates by Section 22-3-950 of the 1976 Code. The language of that section clearly limits that power to contempts committed in the magistrate's presence. Therefore, one who is not in the presence of the court could not be subject to the punishment prescribed by Section 22-3-950. Furthermore, municipal courts not being courts of general jurisdiction have no power under the common law to punish for contempt other than that power specifically provided by statute.

As to guidelines for getting absent defendants before the court, this Office has no prepared guidelines as such for use by the courts. However, I am informed that Mr. Neal Forney of the South Carolina Court Administration may be able to assist you in this regard. If you wish to contact him, his address and telephone number are P. O. Box 11788, Columbia, South Carolina 29211, 758-2961.

I trust the preceding discussion adequately answers your questions, however, if you have any further questions regarding this matter, please feel free to contact me.

Very truly yours,

\*2 Richard P. Wilson  
Assistant Attorney General

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