

1979 WL 42997 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1979

***1 RE: Jurisdiction of Ministerial Magistrates of Charleston County**

Mr. Neal M. Forney, Jr.
Assistant Director
S. C. Court Administration
P. O. Box 1178
Columbia, South Carolina 29211

Dear Mr. Forney:

In a letter to this Office you asked:

Do the ministerial magistrates for the City of Charleston have the jurisdiction to conduct a jury trial in cases of notices to quit, distress warrants, and claim and delivery proceedings because of the holding in the Crowe decision of the South Carolina Supreme Court?

It is provided by Section 43-641 of the 1962 Code of Laws, as amended, that:

(t)here shall be three ministerial magistrates in the city of Charleston, who shall have the same powers and duties as ministerial magistrates in the city of Charleston have heretofore had. Such ministerial magistrates shall have the right to appoint one constable each. Provided, that on all Notices to Quit, Distress Warrants and Claim and Delivery Proceedings, when in default or when a jury trial is not requested, authority is given to conduct hearings, pass orders, extensions and writs in the same manner and to the same extent as the county magistrates and to charge the same fees as are charged by other Magistrates in Charleston County. When either party requests a jury trial, the case shall be transferred within five days to the Charleston County Court which shall have jurisdiction to dispose of it, as in other cases, by trial or otherwise.

You asked whether in light of the 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 referenced ministerial magistrates have jurisdiction to conduct jury trials in the reference matters. I assume you are referring to the statement of the Court in the Crowe case that magistrates' courts are included in the uniform judicial system and have uniform countywide jurisdiction. Also, as you are aware, in the companion case of State, ex rel. McLeod v. Dixie S. Robinson, etc., the Supreme Court held that a statute which created disparity not only between magistrates statewide but also within Beaufort County was unconstitutional inasmuch as it violated [Article V, Section 1 of the South Carolina Constitution](#).

There does not appear to be any separate statutory provision which makes reference to a manner of appointment of ministerial magistrates in Charleston County which differs from that of other magistrates in this State. It appears, therefore, that it must necessarily be held that the office of ministerial magistrate is a constitutional office within [Article V, Section 23 of the South Carolina Constitution](#), the section creating the office of magistrate. The distinction of being appointed as a 'ministerial' magistrate does not render such an office holder to be anything less than a magistrate in the typical sense inasmuch as such 'ministerial' magistrates were appointed pursuant to [Article V, Section 23](#) by the Governor with the advice and consent of the Senate.

*2 As referenced, the Supreme Court in Crowe, supra, held that inasmuch as magisterial courts are part of the unified judicial system, the jurisdiction and authority of magistrates must be provided for uniformly. However, pursuant to Section 43-641, as amended, the ministerial magistrates of Charleston County are permitted to handle cases of notices to quit, distress warrants, and claim and delivery proceedings only when such are default actions or when a jury trial is not requested. To the extent that Section 43-641, as amended, fails to provide for ministerial magistrates in a manner uniform with other magistrates in this State, i.e. that there is a disparity as to powers and duties not only between the magistrates in Charleston County but also between magistrates state-wide, it is the opinion of this office that such referenced section is unconstitutional inasmuch as the concept of uniformity for magisterial courts is violated.

While this office has no reasonable doubt as to the validity of its determination that Section 43-641, as amended, is unconstitutional to the extent that the jurisdiction of the referenced ministerial magistrates is not uniform with other magistrates in Charleston County and the State, it may be that local authorities in Charleston County may wish to seek a declaratory judgment to judicially determine the validity of the referenced section.

In lieu of a declaratory judgment, the issue of the constitutionality of the referenced section could be raised by a party to one of the referenced actions.

Hopefully the above is in complete response to your inquiry.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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