

1979 S.C. Op. Atty. Gen. 80 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-65, 1979 WL 29070

Office of the Attorney General

State of South Carolina

Opinion No. 79-65

May 9, 1979

***1 SUBJECT: Municipal Courts, Bail, Ministerial Recorders, Municipal Recorders**

A ministerial recorder is without authority to admit to bail.

TO: Henry F. Floyd, Esquire
Pickens City Attorney

QUESTION:

Does a ministerial recorder have the authority to admit to bail a defendant arrested pursuant to a warrant issued by the ministerial recorder or a municipal recorder?

AUTHORITIES:

[Sections 14-25-310, 14-25-320, 22-5-510, 17-15-10, 17-15-110, Code of Laws of South Carolina](#), 1976; 8 C.J.S. [Bail](#), Section 39(a), p. 103; Att'y Gen. Ops. of February 16, 1978 and March 9, 1978.

DISCUSSION:

You have asked whether a ministerial recorder appointed pursuant to [Section 14-25-310 of the 1976 Code](#) of Laws has the authority to set a bond for a defendant arrested pursuant to an arrest warrant issued by the ministerial recorder or a municipal recorder.

The powers of a ministerial recorder are provided by [Section 14-25-320 of the 1976 Code](#) of Laws which states that: (m)inisterial recorders shall have power to issue summonses, subpoenas, arrest warrants and search warrants in all cases arising under the ordinances of the municipality in which the office is created and in criminal cases as are now conferred by law upon magistrates but shall have no other judicial power.

It has been stated that:

(u)nless the power to admit to bail is inherent in the judicial office, or is expressly granted by statute, it does not exist. 8 C.J.S. [Bail](#), Section 39(a), p. 103.

Certain officers are authorized by statute to admit persons to bail in this State. (See [Sections 22-5-510, 17-15-10, 17-15-110 of the 1976 Code](#) of Laws). Even though it is not expressly stated by statute that municipal recorders have such authority, this Office has construed [Section 14-25-970 of the 1976 Code](#) of Laws, which grants such recorders the 'powers, duties, and jurisdiction in criminal matters made under municipal or State law as are now conferred by law upon the magistrates', to confer upon municipal recorders the power and authority to set bail in accordance with the Bail Reform Act of 1969. (See enclosed opinion dated February 16, 1978).

As referenced, [Section 14-25-320](#) grants certain specified powers to ministerial recorders but states further that they 'shall have no other judicial power.' Furthermore, with reference to such, it can not be stated that the power to admit to bail is inherent in the office of a ministerial recorder.

Admittedly, it is stated that 'the power to commit or to hold accused to answer has also been held to imply the power to admit to and the take bail.' 8 C.J.S. *Bail*, Section 39(a), p. 102. The arrest warrant which may be issued pursuant to [Section 14-25-320](#), *supra*, requires that a particular individual be arrested and brought 'before . . . (the issuing officer) . . . forthwith to be dealt with according to law.' As to the assertion that pursuant to such direction that a defendant be 'dealt with according to law', a ministerial recorder is authorized to admit to bail, it is the opinion of this Office that such authority may not be implied. To permit such interpretation arguably could lead to assertions that ministerial recorders may hold preliminary examinations and perhaps even try certain defendants. Furthermore, in light of the statement in [Section 14-25-320](#), *supra*, that ministerial recorders have certain powers 'but shall have no other judicial power', arguably, implied powers were not contemplated by the General Assembly as to ministerial recorders.

*2 Please be advised additionally that as to the matter of admitting to bail an individual arrested pursuant to a warrant issued by a municipal recorder, the opinion of February 16, 1978, previously referenced stated that ' . . . arrest warrants are commonly returnable to the issuing court for the setting of bonds.' Therefore, the municipal recorder should typically admit to bail a defendant arrested by a warrant issued by his court.

With reference to the above, in the opinion of this Office, a ministerial recorder is without authority to admit to bail an individual arrested pursuant to an arrest warrant issued by a ministerial recorder or a municipal recorder.

As to any problems that may result due to the inability of a ministerial recorder to admit to bail, please be advised that this Office in a prior opinion (letter of Ms. Henderson to Mr. Zier dated March 9, 1978) stated that a municipality is authorized to appoint an assistant or associate judge empowered to act only in the absence of the chief municipal judge. Therefore, as to any problems that may arise as to admitting to bail when the municipal recorder is unavailable, the availability of an assistant recorder should remedy such problems.

CONCLUSION:

Inasmuch as ministerial recorders are not specifically authorized to admit a defendant to bail and such authority can not be implied, the authority of a ministerial recorder to admit to bail does not exist.

Charles H. Richardson
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