1979 WL 43631 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 2, 1979

***1** Honorable Paul A. Foster
Magistrate
Mt. Pleasant
Post Office Box 335
Mt. Pleasant, South Carolina 29464

Dear Judge Foster:
In a letter to this Office you raised several questions concerning the civil jurisdiction of magistrate's courts in Charleston County. Specifically, you stated that magistrates in the City of Charleston have refused to consider civil cases as to matters where the monetary sum does not exceed one thousand ($1,000.00) dollars. They have indicated that they do not have jurisdiction to hear or try such cases.

Presumably, the cases you are referencing are those that would typically be within the civil jurisdiction of a magistrate pursuant to Section 22-3-10, Code of Laws of South Carolina, 1976, as amended. As to the jurisdiction of the magistrates within the City of Charleston, an earlier opinion of this Office, a letter dated May 16, 1979 to Mr. Neal Forney, a copy of which is enclosed, referenced Section 43-641, Code of Laws of South Carolina, 1962, as amended which provides for such magistrates and considered the question of whether ministerial magistrates for the City of Charleston have jurisdiction to conduct a jury trial in cases of notices to quit, distress warrants, and claim and delivery. Such opinion referenced that pursuant to Section 43-641:
'(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.'

The above referenced section further provided for the jurisdiction of ministerial magistrates as to notices to quit, distress warrants, and claim and delivery proceeding and stated that such magistrates had jurisdiction over such matters when in default or when a jury trial is not requested.

In the earlier opinion, reference was made to the decision last year by the South Carolina Supreme Court, State of South Carolina, ex rel., McLeod v. Crowe, Opinion No. 20805, Filed November 13, 1978, which indicated that magistrates' courts are included in the uniform judicial system and have uniform county-wide jurisdiction. It was also stated in the companion case of State, ex rel., McLeod v. Dixie S. Robinson, etc., that a statute which created disparity not only between magistrates statewide, but also within Beaufort County, was unconstitutional inasmuch as it violated Article 5, Section 1, of the South Carolina Constitution. The opinion referenced that the office of a 'ministerial' magistrate is nothing less than a magistrate in the typical sense, and inasmuch as pursuant to Crowe, magisterial courts are part of the unified judicial system:
'(t)o 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, out also magistrates statewide, it is the opinion of this Office that such referenced section is unconstitutional inasmuch as the concept of uniformity for magisterial courts is violated.'

***2** Such opinion also stated however that while we had no 'reasonable doubt' as to our interpretation of Section 43-641, as amended, as expressed in the opinion, local authorities in Charleston County' . . . my wish to seek a declaratory judgment to judicially determine the validity of the referenced section.'

While recognizing that pursuant to Section 5 of Part III of the recent comprehensive judiciary bill passed by the Legislature (R238, S402 (1979)), 'ministerial magistrates' may be appointed to handle certain specified ministerial duties, I have been advised that the magistrates within the City of Charleston have not been so specifically designated. nated. Therefore, with reference to the above, it would appear that magistrates within the City of Charleston are acting improperly in refusing to accept civil cases where the jurisdictional amount is less than one thousand ($1,000.00) dollars. Inasmuch as the office of 'ministerial' magistrates is the same as that of a typical magistrate, any disparity in jurisdiction would be unconstitutional and not in keeping with either the Crowe decision or the recently enacted legislation affecting magistrates.

You also stated in your letter that even though magistrates now have county-wide jurisdiction, "county magistrates' cannot serve or deal with 'city defendants'. In short, everyone seems to be of the opinion that a client could bring an action against a 'county defendant', but there would be no way for him to bring a civil action in a magistrate's court against a 'city defendant'.' In our telephone conversation you indicated that you meant by such statements that there is a policy in Charleston County that all civil cases must be brought in the magisterial district where the defendant resides. Please be advised that I am unaware of any statutory provisions which mandate such a policy. Furthermore, as was referenced, by Section 18 of Part III of the recent legislation it is provided that 'magistrates shall have jurisdiction throughout the county in which they are appointed.'

Such policy as above expressed does not appear to be in keeping with the recently enacted legislation or with the mandate of Crowe that magistrates now have county-wide jurisdiction, which would include county-wide jurisdiction for purposes of civil actions. Therefore, regardless of whether a defendant is a 'county defendant' or a 'city defendant', any magistrate in Charleston County would have jurisdiction to entertain the action where the defendant is a resident of Charleston County and where the action is properly being brought in Charleston County.

In our telephone conversation you also asked whether a summons and complaint instituting a civil action in magistrate's court could be served by certified mail. Inasmuch as Section 22-3-110, Code of Laws of South Carolina, 1976, indicates that the provisions of Title 15 referencing civil actions generally apply also to magisterial courts and inasmuch as pertinent provisions of Title 15 do not permit the service of a summons and complaint initiating a civil action by certified mail, such a practice would be improper.

***3** If there is anything further, please do not hesitate to contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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