

1978 WL 34852 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 12, 1978

***1 SUBJECT: Greenville County Check Clearing House**

(1) Act No. 19 (1975), as amended, confers no jurisdiction over nonfraudulent check cases to the Clearing House Director or other Greenville County magistrates.

(2) Neither the Check Clearing House Director nor other Greenville County magistrates can lawfully collect fees in bad check cases.

(3) The Check Clearing House Director has no authority to issue a Subpoena Ticket to collect a fine or a fee, or both.

(4) A magistrate collecting a fee in a criminal worthless check case may be held civilly liable for abuse of process.

Neal Forney
Assistant Director
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Administration

QUESTIONS:

1. Do Acts Nos. 19 of 1975 and 481 of 1976 give the Director of the Check Clearing House of Greenville County concurrent jurisdiction with all other county magistrates in nonfraudulent check cases?

2. Can the Director of the Check Clearing House lawfully charge a fee from Fifteen and no/100 (\$15.00) Dollars to Thirty-five and no/100 (\$35.00) Dollars for collecting checks?

3. Does the Director of the Check Clearing House have the authority to issue a Subpoena Ticket in lieu of an arrest warrant or summons and complaint?

STATUTES, CASES AND OTHER AUTHORITIES:

Acts and Joint Resolutions, South Carolina, 1975, No. 19; Acts and Joint Resolutions, South Carolina, 1976, No. 481; South Carolina Code of Laws (1976), Sections 34-11-90 22-7-30, 22-7-40; South Carolina Code of Laws (1962), Section 27-422; [South Carolina Constitution, Art V, Section 22](#); South Carolina Attorney Generals Opinions, 1973, No. 3513 at 123; South Carolina Attorney Generals Opinions, 1973, No. 3476 at 55; South Carolina Attorney Generals Opinions, 1963, No. 1520 at 85; [Broom v. Douglass](#), 57 So. 860; [Cox v. Perkins](#), 185 S.W. 2d 954; [Hoppe v. Klapperich](#), 28 N.W. 2d 780; [Richardson v. Edgeworth, Barlow, et al.](#), 214 So. 2d 579; 173 A.L.R., Civil Liability of Judicial Officer for Malicious Prosecution or Abuse of Process, 836; 47 [Am Jur](#) 2d, Justices of the Peace, 931.

DISCUSSION:

1. Do Acts Nos. 19 of 1975 and 481 of 1976 give the Director of the Check Clearing House of Greenville County concurrent jurisdiction with all other county magistrates in nonfraudulent check cases?

Act No. 19 of 1975 Section 2 states that the Check Clearing House Director and all other county magistrates shall have concurrent jurisdiction 'in fraudulent check cases . . .' Nowhere does Act. No. 19 refer to magistrates or the Clearing House Director having jurisdiction over nonfraudulent checks. Although, 1975 Act No. 19 Section 2 was amended by 1976 Act No. 481, the amendment did not affect the jurisdictional provision of the former act.

Evidence needed to establish a prima facie case of fraudulent intent in a worthless check case is addressed in [Section 34-11-70, South Carolina Code of Laws, 1976](#). The section states that when a check is not paid by the drawee because the drawer has no account, or has insufficient funds on deposit, or because the check has an insufficient signature, and the drawer failed to pay the amount within ten (10) days after written notice, fraudulent intent is presumed.

2. Can the Director of the Check Clearing House lawfully charge a fee from Fifteen and no/100 (\$15.00) Dollars to Thirty-five and no/100 (\$35.00) Dollars for collecting checks?

*2 He clearly cannot. [South Carolina Constitution, Article V Section 22](#), provides that the jurisdiction of magistrates is to be determined by the General Assembly. Pursuant to that provision, South Carolina Code of Laws, 1976, Section 34-11-90, confers criminal jurisdiction on magistrates in worthless check cases where the amount of the instrument is less than One Hundred and no/100 (\$100.00) Dollars. Since the jurisdiction conferred is criminal, matters of magistrates' fees are controlled by Section 22-7-30, which states that 'magistrates shall receive annual salaries in lieu of all fees and costs in criminal cases or proceedings . . .' (emphasis supplied). Furthermore, a subsequent [code section, Section 22-7-40](#), states that a magistrate's receipt of 'any compensation for his services in criminal cases other than his salary . . . whether such cases are actually tried, compromised or transferred . . .' is a misdemeanor for which the magistrate, if convicted, may be fined and/or imprisoned. These laws apply to the Clearing House Director, and to all other magistrates with equal force. Act No. 19 (1975), as amended, which established the Clearing House in Greenville County clearly stated the Director was to be a magistrate. Thus, his legal status, directorship notwithstanding, is that of a magistrate. All laws pursuant to that status apply to him. Magistrates may not legally charge or collect fees in criminal cases; neither may the Clearing House Director. This is well established.

Certain local laws attempt to make exceptions to the proscription against magistrates' fees in bad check cases. Typically, these attempt to permit magistrates in specified counties to so collect. (See 1962 South Carolina Code of Laws Section 27-422, as amended). Research by this office, however, has revealed no such exception for Greenville County magistrates. Similarly, Act No. 19, (1975), as amended, established the Clearing House but provided Greenville County magistrates with no statutory authorization to collect fees in fraudulent check cases.

It should be noted that even where statutory authorization for magistrates to charge fees in criminal cases exists, the Office of the Attorney General has consistently held such authorization improper. The basis for this is the clear and unequivocal assertion of [Section 22-7-40](#), quoted supra. (See 1973 Op. Atty. Gen., No. 3513, at 123; 1973 Op. Atty., Gen. No. 3476 at 55; 1963 Op. Atty. Gen., No. 1520 at 85.)

3. Does the Director of the Check Clearing House have the authority to issue a Subpoena Ticket in lieu of an arrest warrant or summons and complaint?

The precise purpose of issuing the Subpoena Ticket and then subsequently issuing the Final Notice (if necessary) is not clear from the faces of those two documents. Certainly, however, the purpose is either:

- i. to collect the Fifteen and no/100 (\$15.00) Dollar—Thirty-five and no/100 (\$35.00) Dollar fee; or
- ii. to collect the amount of the check; or,

*3 iii. to collect both.

(Since no arrest warrant has been issued at this point, the purpose could not be, as the Subpoena Ticket would lead one to believe, to initiate criminal process.) As discussed supra, the fee charge is void ab initio. Thus, any attempt to facilitate fee collection through the vehicle of a Subpoena Ticket or a Final Notice issued by any magistrate, Clearing House Director included, is similarly illegal.

Collection of the amount of the bad check, through the use of the Subpoena Ticket and/or Final Notice, is also improper. Act No. 19 (1975), as amended, authorized no jurisdictional extension to Greenville County magistrates. Their jurisdiction is limited to the criminal matter, i.e., the prosecution of worthless check payors. Neither the Clearing House Director nor any other magistrates have the power to compel the payment of a civil debt. This was emphasized by the Mississippi State Supreme Court in [Richardson v. Edgeworth, Barlow, et al.](#), 214 So. 2d 579, 599:

A justice of the peace (magistrate) is a judicial officer. A justice of the peace court (magistrate's court) is a judicial body. This officer and this court have no constitutional right or power to serve as a collection agency for creditors. A creditor may properly file his claim for a civil debt against the debtor . . . But the justice of the peace (magistrate) . . . is not a collection bureau. If he acts as a collection bureau, or if he utilizes the criminal processes of the court to collect a civil debt, he is perverting the functions of this—Court and bringing disrespect upon the entire judicial process.

4. AN ADDED DANGER

A magistrate issuing a subpoena or a final notice to compel payment of the amount of a worthless check or a related fee is acting outside of his statutorily prescribed jurisdiction. For such action, a magistrate may be held civilly liable for abuse of process. There is much authority for holding the magistrate who acts without jurisdiction liable 'even though his act involved the decision, made in perfect good faith, that he had such jurisdiction.' 173 A.L.R. 839, at 841, 47 Am. Jur. 2d 931, [Broom v. Douglass](#), 175 Ala. 268, 57 So. 860; [Cox v. Perkins](#), 229 Ky. 470, 185 S.W. 2d 954. In addition, immunity sometimes afforded to judicial officers has no effect in this regard. ' . . . (T)he rule conferring upon a judicial officer virtual absolute immunity from liability for acts done while acting in his judicial capacity has no application if he acts wholly without jurisdiction.' [Hoppe v. Klapperich](#) 224 Minn. 224, 28 N.W. 2d 780, cited in 173 A.L.R. 836, at 841.

CONCLUSION

1. Act No. 19 (1975), as amended, confers no jurisdiction over nonfraudulent check cases to the Clearing House Director or other Greenville County magistrates.
2. Neither the Check Clearing House Director nor other Greenville County magistrates can lawfully collect fees in bad check cases.
3. The Check Clearing House Director has no authority to issue a Subpoena Ticket to collect a fine or fee, or both.

*4 4. A magistrate collecting a fee in a criminal worthless check case may be held civilly liable for abuse of process.

To whatever extent previous opinions of this office suggest other than what this opinion holds, those opinions are overruled.

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