

1978 WL 35257 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 5, 1978

***1 RE: Magistrates Issuing Warrants, Conducting Bail Proceedings, Holding Preliminary Examinations For Municipal Courts in Sumter County**

Mr. Neal Forney
Assistant Director
S.C. Court Administration
P. O. Box 11788
Columbia, S.C. 29211

Dear Mr. Forney:

In a recent letter to this Office you asked:

Should Sumter County magistrates issue warrants, conduct bail proceedings, and hold preliminary examinations for municipal court cases in Sumter County?

Please be advised that this Office is unaware of any statutory provisions which mandate that a magistrate must perform such for municipal court cases. As you are aware, pursuant to [Section 14-25-970 of the 1976 Code](#) of Laws a municipal court in a municipality of 1,000 or more in population

‘. . . shall have jurisdiction to try and determine all cases arising under the ordinances of the city in which the court is established and generally shall have all such judicial powers and duties as are now conferred upon the mayor of such city, either by its charter or by the laws of this State. The municipal court shall also have all such powers, duties and jurisdiction in criminal cases made under municipal or State law as are conferred by law upon the magistrates appointed and commissioned for the county in which the court is established, except that such court shall not have the authority of a magistrate to appoint a constable.’

Therefore, the recorder for a municipal court would be authorized to perform those duties outlined above.

As to the matter of a magistrate conducting bail proceedings for municipal court cases, a previous opinion of this Office dated February 16, 1978 a copy of which is enclosed stated in reference to the refusal of Sumter County magistrates to set bail in criminal cases originating in the municipal court,

‘It appears that their position is correct inasmuch as arrest warrants are commonly returnable to the issuing court for the setting of bonds. The Bail Reform Act specifies the procedures and conditions of release to be employed by the courts before which accused persons are brought to answer. Although that Act itself is silent as to municipal courts, it is nevertheless certain, in our opinion, that the subsequent action of the Legislature in amending [Section 14-25-970](#), *supra*, effectively conferred criminal jurisdiction upon the municipal courts and accordingly imposed the power and duty to set bail on defendants in accordance with the Bail Reform Act of 1969.’

Furthermore, as to the matter of the preliminary hearing, a previous opinion of this Office dated September 23, 1976 stated that in the opinion of this Office,

‘ . . . a municipal judge who issues an arrest warrant in a matter beyond his jurisdiction to try has a duty to hold a preliminary hearing when such is properly demanded, both under the language of Section 43-232 and because his failure or refusal to do so could prohibit prosecution of the charge in general sessions court.’

*2 Therefore, it appears that it is the responsibility of the city recorder to issue warrants, hold preliminary examinations, and conduct bail proceedings for those cases triable in the municipal court.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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