1975 WL 29685 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 10, 1975

***1** Honorable David H. Maring
Georgetown Municipal Judge
Georgetown, South Carolina 29440

Dear Judge Maring:
Attorney General McLeod has referred your letter of February 20 to me for reply.
1. Can municipal recorders issue search warrants and arrest warrants concerning crimes committed within the city where the penalty exceeds $100.00 or 30 days?

The municipal courts are established under the provisions of Section 15-1002, et seq., 1962 Code of Laws. The court is established 'for the trial and determination of all cases arising under the ordinances of such city.'

Section 15-1010 enumerates what jurisdiction the court is to possess. Therein the court is authorized to try and determine all cases arising under the municipal ordinances. Also the court is given such judicial powers and duties as are conferred upon the mayors and such powers, duties, and jurisdiction in criminal cases as are conferred upon the magistrates of that particular county.

The Supreme Court in Keels v. City of Sumter, 95 S.C. 203, 78 S.E. 893 (1913), differentiated between the power to try and determine violations of city ordinances and violations of state statutes insofar as mayors were concerned. The court held, on the authority of City of Anderson v. Seligman, 85 S.C. 16, 67 S.E. 13 (1910), that the legislature merely intended to give to mayors the same powers to try persons charged with violations of city ordinances as magistrates had to try persons charged with violations of state statutes.

Attorney General McLeod has rendered the opinion that the Keels case is applicable to municipal courts insofar as the holding of preliminary hearings are concerned. Op. A.G. of May 2, 1974. Where preliminary hearings are specifically authorized such as in the case of liquor law violations, obscene materials, etc., then of course these would be allowed. It would follow that the municipal courts must find their authority to issue warrants in some specific authorization.

Section 17-271, 1962 Code of Laws, as amended, outlines the procedure for the issuance of search warrants. The municipal courts are delegated the power to proceed under the authorization of this statute and as such derive whatever power they possess to issue search warrants from this statute.

As to arrest warrants for crimes not within their jurisdiction to try, the municipal court must be able to point to some specific authorization before the warrant can issue. Keels, supra.

It is therefore the opinion of this office that municipal recorders' courts have the authority to issue search warrants within the guidelines of Section 17-271, but have the power to issue arrest warrants only for the violation of city ordinances.
2. Would a city ordinance making all state crimes a violation of the Municipal Code allow the Municipal Judge to issue warrants even though he would not have jurisdiction to try the case?

The case of Town of Conway v. Lee, 209 S.C. 11, 38 S.E.2d 914 (1946) dealt with a similar type of ordinance. There, the town made any violation of common or statutory law of the State also a violation of the town's ordinances. In striking down a conviction of a state liquor law by a municipal court the Supreme Court had this to say:

***2** Criminal ordinances are, of course to be strictly construed and a defendant has a right to know just wherein he is charged with the commission of a crime and not be faced with a blanket ordinance which, in effect, says that everything which is a violation of the law within this State, both by statute and common law, is a violation of the city ordinance, no adequate reference being made to any specific statute this Court is of the opinion that the ordinance is void because of uncertainty. See also: Anderson v. Seligman, 85 S.C. 16, 67 S.E. 13 (1909); concurring opinion in Bourne v. Graham, 260 S.C. 554, 197 S.E.2d 674 (1973); 5 McQuillin, Municipal Corporations (1969 Ed.), Section 16.12; 56 Am.Jur.2d Municipal Corporations Sections 374-377.

According to the Lee case and other authorities it would seem apparent that such an ordinance would be void ab initio and therefore the court would be unable to expand its jurisdiction by this means.

3. Can a municipal judge hold preliminary hearings in cases where the penalty exceeds his jurisdictional authority but where the crime was committed in the municipality?

Enclosed please find the Opinion of Attorney General McLeod which deals directly with this question.

4. Does the Bail Bond Act, Section 17-300, et seq., 1962 Code of Laws, as amended, apply to municipal courts?

The provisions of Title 43 pertaining to bail and recognizance in magistrates court were made applicable to municipal courts in State v. Langford, 223 S.C. 20, 73 S.E.2d 854 (1953). The provisions relating to magistrates' power to admit to bail before the Bail Bond Act are found at § 43-241, et seq., 1962 Code of Laws, as amended.

Since the implementation of these sections, the Bail Bond Act was enacted. Section 17-300, et seq., 1962 Code of Laws, as amended. The Act makes release upon recognizance mandatory except under certain findings by the court.

Municipal courts are not specifically mentioned in the Act. It would be difficult, however, to argue that where a constitutionally guaranteed right, such as the granting to bail, is regulated or authorized that it should not encompass all courts concerned. This would be especially true where as here you have a court that is one of limited jurisdiction and can impose only lesser penalties than those allowed the courts mentioned in the Act.

Using the Langford rationale it would seem that the provisions of the Bail Bond Act, as being applicable to magistrates' courts, would also be applicable to the municipal courts insofar as the cases they have jurisdiction over.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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