

1974 WL 27597 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1974

***1 Re: Proposed Bill for Preliminary Hearing**

The Honorable Daniel R. McLeod
Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Dan:

I am in agreement with your proposed Bill to change Section 43-232 of the Code of Laws for South Carolina to add the thirty day requirement. However, I would request that you consider having the law amended so that jurisdiction would rest in the Court of General Sessions whether such a demand was made or not, subject to having the case sent back to the magistrate for a preliminary hearing where a demand was made.

I have any number of cases where I was not aware that a demand had been made for a preliminary hearing and I indicted the individual, or where a demand had been made and I was of the opinion that the hearing had been held and indicted the individual, only to find that the indictment was invalid and had to be quashed and a new indictment obtained.

I do not see how vesting jurisdiction in the Court of General Sessions, subject to being returned to the magistrates would be offensive to the rights of the defendant and would certainly be easier on the Solicitors as they would not have to reindict.

Please give this matter your consideration.

I would also request that you consider a requirement that a copy for any written demands for preliminary hearing be sent either to the Solicitor or to the Clerk of Court and that the magistrates required to report to the Solicitor, or to the Clerk of Court, in writing, the date of the preliminary hearing and the results of the same. I have had situations where I indicted a case not knowing that it had been dismissed by the the magistrate.

Would you also consider a requirement that the magistrates forward all warrants to the Solicitor within twenty-four hours after a preliminary hearing has been held. Often, we do not receive warrants until two of three days before Court and we have a great deal of difficulty getting things ready in time for the grand jury.

I would be happy to be heard by the Legislative Committee in question concerning this matter if they desire testimony from the Solicitors.

With kindest personal regards and best wishes, I am,
Very truly yours,

Robert B. Wallace

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