

1974 S.C. Op. Atty. Gen. 43 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3694, 1974 WL 21213

Office of the Attorney General

State of South Carolina

Opinion No. 3694

January 16, 1974

*1 The Honorable Ira M. Grady
Berkeley County Magistrate
Post Office Box 685
Moncks Corner, South Carolina 29461

Dear Judge Grady:

You have recently asked the following question of this office:

Does Section 43–221 of the 1962 Code of Laws of South Carolina place a mandatory requirement on a magistrate in one county to endorse an arrest warrant of a magistrate in another county where the arrest warrant is properly drawn and the bond set is within the statutory limits?

A reading of the above cited Statute reveals that the language used in granting to the magistrate the power to endorse warrants makes use of the word ‘may’. It is a well known general principle of law that the statutory use of the word ‘may’ usually connotes a grant of discretionary power and is not mandatory in meaning. [See 57 C.J.S. May (1948).] However, this is not always the case.

Whether or not the word [may] is to be construed as mandatory or as permissive is to be determined in each case from the apparent intention as gathered from the context, considering the whole instrument in which it is used . . .

It would, therefore, seem that a reading of the Section 43–221 in its entirety is necessary to resolve the question posed. At the close of paragraph two of the Section it states: ‘Provided, however, that a magistrate shall not be required to endorse any such warrant . . .’ (emphasis added)

The logical inference to be drawn from the ‘provided’ clause is that a magistrate is required to endorse warrants except where discretion is provided by legislation. This is further substantiated by the fact that the purpose of countersigning a warrant is merely to convey jurisdiction over the accused. The Statute does not place on the countersigning magistrate any duty for ascertaining probable cause or other duties incident to the issuing of an arrest warrant. It is inconceivable that the legislative intent of this Statute was to give to the countersigning magistrate any power to override the decision of his fellow magistrate and thereby void the effectiveness of the warrant.

It is, therefore, the opinion of this office that Section 43–221 of the 1962 Code of Laws of South Carolina is intended to convey upon magistrates the judicial power to countersign warrants issued by magistrates in another jurisdiction and this power is not discretionary except where provided by Statute.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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