

1974 WL 28039 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 12, 1974

*1 Mr. Milton R. Key
Criminal Investigator
Anderson County Court House
Anderson, South Carolina 29621

Dear Milton;

You have requested that this Office advise you as to whether the solicitor may direct for preliminary hearing a criminal action to a magistrate other than that one which issued the arrest warrant.

The wording of Section 43-231, of the Code of Laws of South Carolina, 1962, states in pertinent part, 'any magistrate who issued a warrant charging a crime beyond his jurisdiction shall grant and hold a preliminary investigation of it upon the demand in writing of the defendant made at least ten days before the convening of the next Court of General Sessions . . .'. This being as clear as it is, and the only provision for removal of the hearing being set forth in Section 43-233, and being addressed solely to the issuing magistrate, it is the opinion of this Office that the preliminary hearing if demanded must be directed back to that magistrate which issued the arrest warrant. Any change of venue from the issuing magistrate must be done upon motion to that magistrate and can not otherwise be effective.

I trust this will be sufficient in answering the question which you posed, if we may be of any further assistance please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

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