1974 S.C. Op. Atty. Gen. 139 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3766, 1974 WL 21280

Office of the Attorney General

State of South Carolina
Opinion No. 3766
May 2, 1974

***1** Mr. Neal Forney
Director
Judicial Education
Accounting Annex
University of South Carolina
Columbia, South Carolina

Dear Mr. Forney:
In correspondence with this Office, you have requested an official opinion of the Attorney General in regard to the following question: Does the municipal court judge have statutory authority to conduct preliminary examinations?

In your inquiry you have noted official Opinion of the Attorney No. 1688 dated June 15, 1964, which appears to approve the practice of municipal judges conducting preliminary examinations. As you note, this opinion is stated in the 1971 Cumulative Supplement to the Code of Laws of South Carolina, Section 15–901. You also point out that in a recent letter to Judge Robert Sheheen, Assistant Attorney General Hutson S. Davis, Jr., suggested that in the absence of express statutory authority, recorders do not have authority to conduct preliminary hearings into crimes involving offenses against the State.

Section 15–901, 1962 Code of Laws of South Carolina, as amended, states:
The attendants or mayors of the cities and towns of this State shall have the power and authority of magistrates in criminal cases within the corporate limits and police jurisdiction of their respective cities and towns and shall especially have the power and authority to try speedily all offenders against the ordinances or laws of the city or town in a summary manner and without a jury, unless demanded by the accused. A mayor or attendant pro tempore shall have the same powers.

While on first reading this statute appears to confer upon the judge of a municipal court the power of a magistrate, a review of South Carolina case law indicates that the South Carolina Supreme Court has taken a more restrictive view of recorders' powers. In the case of Keels v. City of Sumter, 95 S.C. 203, 78 S.E. 893, the South Carolina Supreme Court drew a distinction between a recorder's power with regard to violations of city ordinances and violations of state statutes. In that case the Court quoted from an earlier case:
'Where Section 2003 of the Code of Laws (Section 15–901, 1962 Code of Laws of South Carolina) conferred upon mayors for powers and authority of magistrates in criminal cases within the corporate limits and political jurisdiction of their respective cities, it was merely intended to give to the mayors the same power to try persons charged with the violation of an ordinance that a magistrate had to try persons charged with a violation of a statute, or other laws of the State in cases where the punishment did not exceed a fine of $100 or imprisonment for 30 days. A violation of a provision of an ordinance of a city and a violation of the statute of the state are two separate and distinct offenses. City of Anderson v. Seligman, 85 S.C. 16, 67 S.E. 13.

It would seem from the above quoted case that Section 15–901 does not give to recorders the same powers as magistrates with regard to state statutes, but merely gives to them the powers of a magistrate in the trial of persons charged with

violation of a city ordinance. It appears, therefore, that in the absence of specific statutory authority, a recorder is not empowered to hold preliminary hearings into offenses involving violation of state law. This specific statutory authority has been granted to recorders by the Legislature in certain instances. I would call to your attention Section 16–414.7 of the 1962 Code of Laws, as amended, which specifically gives to recorders the authority to hold preliminary hearings in cases involving obscene materials. Also, Section 46–685 of the 1962 Code of Laws of South Carolina gives to municipal courts the power to try and determine criminal cases involving traffic laws. Section 4–122 of the 1962 Code of Laws of South Carolina vests with the judges of the municipal courts certain authority to try cases involving violations of the Alcohol Beverage Control Act. It is felt that were Section 15–901 to be interpreted as giving to recorders the blanket authority to hold preliminary hearings in all matters involving violations of state law, it would have been unnecessary for the Legislature to grant specific power to do so in the instances cited above. It is, therefore, the opinion of this Office that while municipal courts have all the powers of a magistrate with regard to violation of city ordinances, this power is limited to such offenses and is not extended to offenses involving the violation of statute law unless such powers are so extended by statute and that, therefore, a municipal judge is not empowered to hold preliminary hearings into violation of state law without express statutory authority.

***2** This opinion supersedes official Opinion of the Attorney General No. 1688 which you cited in your letter, on the basis of consideration of subsequent statutory provisions reflecting the legislative construction of Section 15–901 of the Code of Laws.

Very truly yours,

Daniel R. McLeod
Attorney General

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