

1974 WL 27467 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 3, 1974

*1 Mr. Jim Neal
1611 Devonshire Drive
P. O. Box 4616
Columbia, South Carolina 29240

Dear Mr. Neal:

You have requested an opinion from this office with reference to the authority of a magistrate to suspend a sentence and place a person on probation for driving under the influence. You also ask whether such a magistrate may stipulate as a condition of probation that the person enter ASAP.

Section 55-591 is titled 'When sentence may be suspended and defendant placed on probation', and is solely applicable to 'the judge of any court of record with criminal jurisdiction.' The paramount point in your inquiry, therefore, is whether a magistrates court is a court of record. [Elletson v. Dixie Home Stores](#), 231 S.C. 565, 99 S.E.2d 384 (1957), states that a municipal court is not a court of record. Since a magistrate's court is more akin to the municipal courts than any of the other courts of this State, it seemingly is also not a court of record.

To further strengthen this position, it is noted that Section 17-557 in re suspension of sentence in misdemeanor cases has reference to the 'Circuit judges of this State' only. Since a magistrate cannot suspend sentences for misdemeanors, it is highly unlikely that he can suspend sentences and place on Probation under Section 55-591.

Absent specific statutory authority, a sentence imposed by a court may not be suspended by it (1958-58 Op. Atty. Gen. 194)

Therefore, it is the opinion of this office that a magistrate's court is not a court of record and accordingly does not come under the provisions of Section 55-591.

Sincerely,

J. Melvin Screen
Legal Assistant

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