

1974 S.C. Op. Atty. Gen. 345 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3908, 1974 WL 21404

Office of the Attorney General

State of South Carolina

Opinion No. 3908

December 10, 1974

***1 TO: Director, South Carolina Court Administration**

Municipal courts in South Carolina are without authority to issue arrest warrants involving state criminal laws as to which municipal courts are without jurisdiction to entertain except where clearly authorized by statute to issue arrest warrants for such offenses.

Director

South Carolina Court Administration

We have been requested to advise you as to whether or not municipal courts possess the authority to issue arrest warrants for offenses involving state criminal laws.

As we have heretofore observed:

[T]he jurisdiction of municipal courts in criminal cases is generally restricted to matters arising under municipal penal ordinances. 9 McQUILLIN, Municipal Corporations § 27.02 at 590. Municipal courts are limited in their jurisdictional reach to matters over which authority has been expressly conferred by statute or incidentally given by reason of the need to give proper effect to the authority expressly conferred. Id. at 597. The courts of a municipality have no jurisdiction relative to the violation of state statutes unless such jurisdiction is expressly conferred by statute [Id. at 591] and [such courts] possess the jurisdiction of magistrates only when that jurisdiction is constitutionally conferred by the General Assembly. Id. at 596. See, Opinion Mo. ___, 1974 OP.ATTY.GEN. ____ (June 26, 1974).

In the absence of a statutory or constitutional provision conferring concurrent jurisdiction, then, state courts have exclusive jurisdiction of offenses which are punishable only as violations of the state penal law and the municipal courts have exclusive jurisdiction of offenses which are punishable only as violations of municipal ordinances. 22 C.J.S. Criminal Laws § 132 at 352–353.

While the General Assembly has expressly conferred upon municipal courts powers relative to certain state laws [see, e.g., CODE OF LAWS OF SOUTH CAROLINA § 46–685 (1962) (power to try violations of the Uniform Act Regulating Traffic)] and have expressly given to municipal courts some of the powers which magistrates in this State possess [see, e.g., 56 STAT. Act No. 202 § 1 at 217 (1969) (power to issue search warrants)], it has not given each municipal court in South Carolina every power that magistrates in this State have had conferred upon them. Cf., Opinion No. ___, 1974 Op. Atty. Gen. ____ (June 26, 1974). Among the powers which the General Assembly has conferred upon magistrate courts [see, CODE OF LAWS OF SOUTH CAROLINA § 43–211 (1962)] but has not generally given to municipal courts either expressly or impliedly is the authority to issue warrants of arrest for persons who have violated state criminal laws that municipal courts have no jurisdiction concerning; e.g., murder.

It is the opinion of this office, therefore, that municipal courts in South Carolina are without authority to issue arrest warrants involving state criminal laws as to which municipal courts are without jurisdiction to entertain except where clearly authorized by statute to issue arrest warrants for such offenses. See, e.g., 54 STAT. Act No. 161 § 2 at 224 (1965); see also, Opinion No. 3627, 73 Op. Atty. Gen. 300 (September 24, 1973).

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