

1973 S.C. Op. Atty. Gen. 62 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3478, 1973 WL 20942

Office of the Attorney General

State of South Carolina

Opinion No. 3478

February 9, 1973

***1 In Re: Magistrates - - - Bench Warrants - - - Duty of Sheriff to Execute**

Honorable Frank Powell
Sheriff
1100 Huger Street
Columbia, South Carolina

Dear Sheriff Powell:

You have asked two questions with reference to bench warrants issued by magistrates for defendants who have defaulted in payment of deferred fines imposed with alternative jail sentences.

IS A MAGISTRATE AUTHORIZED TO ISSUE SUCH BENCH WARRANTS?

When a magistrate imposes a sentence of fine or imprisonment, and grants the defendant time within which to pay the fine, the magistrate is empowered, when the defendant defaults in payment conditions, to issue a bench warrant requiring the defendant's arrest and commitment to jail to serve the alternative jail sentence imposed - - - or so much of it as remains unsatisfied by partial payment of the fine.

When a fine is imposed without alternative jail sentence, the defendant may not thereafter be arrested for nonpayment of a deferred fine.

IS A COUNTY SHERIFF UNDER A DUTY TO EXECUTE BENCH WARRANTS ISSUED BY MAGISTRATES?

The duties of a county sheriff are not set out in the State Constitution, so they may be set at the pleasure of the General Assembly. [Privette v. Grinnell](#), 191 S.C. 376, 4 S.E.2d 305. Sheriffs' duties are set out, generally, in Sections 53–51 through 53–234 of the 1962 Code, as amended.

Section 53–194 reads:

‘The sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority. If the sheriff shall make default herein he shall be subject to rule and attachment as for a contempt and he shall also be liable to the party injured in a civil suit.’

Under the provisions of the foregoing statute, a county sheriff would be under a duty to execute bench warrants issued by magistrates in the circumstances set forth - - - unless the sheriff of a particular county is exempted by special statute from the operation of the Section.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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