

1973 S.C. Op. Atty. Gen. 116 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3508, 1973 WL 21968

Office of the Attorney General

State of South Carolina

Opinion No. 3508

April 6, 1973

- *1 1. A Clerk of Court may not conduct a preseizure hearing.
2. Only a judge of the Court addressed can conduct such preseizure hearings.

Attorney for Sumter County

I am in receipt of your letter of March 26, 1973, to Mr. Joe Allen, asking our opinion as to whether or not a clerk of court can conduct a preseizure hearing under the recent amendments to this State's "claim and delivery" laws. See Act No. 1573, 1972 South Carolina Statutes at Large. You express the opinion that only a judge of the court addressed can conduct such preseizure hearings because of the express statutory language in Section 10-2504 to 10-2507.5, and, moreover, because a clerk of court has no judicial authority.

This office agrees with your conclusion. Sections 10-2505(2), 10-2507.1, and 10-2507.4 each refer to the judge conducting the preseizure hearing. This particular responsibility is imposed by the language of the statutes, and is express and distinct from those responsibilities assigned to the clerks of court. Nor is this office aware of any contended different interpretations.

Regarding the posture of clerks of court as judicial officers, it would appear that clerks are from a constitutional standpoint officers of the court and have quasi-judicial authority which extends at least to determinations of probable cause.

See *Shadwick v. City of Tampa*, — U.S. —, 32 L.Ed. 783, 92 S.Ct. — (1972). Moreover, under the landmark case of [Fuentes v. Shevin](#), 407 U.S. 67, 32 L.Ed.2d 556, 92 S.Ct. 1983 (1972), which mandates these preseizure hearings, it appears constitutionally permissible for clerks of court to conduct such hearing. On the basis of the South Carolina statutes involved, however, it is the opinion of this office that clerks of court may not.

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