

1973 S.C. Op. Atty. Gen. 300 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3627, 1973 WL 21976

Office of the Attorney General

State of South Carolina

Opinion No. 3627

September 24, 1973

*1 In the absence of express statutory language or express authority in the town charter, recorders are not permitted to issue arrest warrants for statutory violations and do not have authority to conduct preliminary hearings pursuant to the issuance of these arrest warrants.

County Attorney

Your recent letter to this office poses several questions involving the jurisdiction of the Camden City Recorder to issue arrest warrants, search warrants and to hold preliminary hearings and set bond where the offense is tryable in Circuit Court.

Recorders are given express authority to issue search warrants under Section 17–271, 1962 Code of Laws of South Carolina, (1971 Cum.Supp.).

There appears to be no authority for a recorder to issue arrest warrants, hold preliminary hearings or set bail where the offense is a violation of state law, unless specific authority is found in the town charter.

Section 15–1010, 1962 Code of Laws of South Carolina states, in part, ... “The municipal court shall also have such powers, duties and jurisdiction in criminal cases as are now conferred by law upon the magistrates ...” This language would appear to give recorders the power to perform as a magistrate. There are, however, two cases which indicate that the South Carolina Supreme Court has taken a more restrictive view of recorder's powers. [[Keels v. Sumter](#), 95 S.C. 203, 78 S.E. 893 (1913) and [City of Anderson v. Seligman](#), 85 S.C. 16, 67 S.E. 13 (1910)].

In striking down a conviction in recorder's court for a violation of a state statute, the supreme court in the Keels case quoted from Seligman:

Where Section 2003 of the Code of Laws conferred upon mayors the powers and authority of Magistrates in criminal cases, within the corporate limits and police 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 a person charged with the violation of a statute, or other law of the state in cases where the punishment did not exceed a fine of one hundred dollars, or imprisonment for thirty days. A violation of the provisions of an ordinance of a city, and a violation of the statute, of the State are two separate and distinct offenses.

The above quoted language precludes only the contention that Section 15–1010 of the Code gives recorders the same powers as magistrates. Section 15–1010 provides one other possibility for recorders handling such matters. Municipal courts, “... shall have all such judicial powers and duties as are now conferred upon the mayor of such city, either by its charter or by the laws of this state.” I would therefore suggest to you that you refer to the town charter of Camden for any express authority in this area.

In sum and substance, it is the opinion of this office that in the absence of express statutory language or express authority in the town charter, recorders are not permitted to issue arrest warrants for statutory violations and do not have authority to conduct preliminary hearings pursuant to the issuance of these arrest warrants.

*2 Hutson S. Davis, Jr.
Assistant Attorney General

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