

1973 WL 26911 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1973

***1 In re: Magistrates—Withdrawing Criminal Warrants**

Honorable R. A. Stephenson
Sheriff
Marion County
Marion, South Carolina 29571

Dear Sheriff Stephenson:

You have inquired as to the legality of a magistrate ‘withdrawing’ a criminal warrant issued by him for unlawful entry and grand larceny. You state that such warrant was issued but was later withdrawn by the magistrate who issued it in return for payment of a \$50.00 ‘cost’.

First, neither a magistrate nor a municipal judge has any authority whatever to charge a fee or other cost in connection with a criminal warrant. Although there is some statutory indication that a charge of a statutory fee in connection with a bad check warrant is authorized, the legality of this practice also is questionable.

Once a magistrate issues an arrest warrant for a crime beyond his jurisdiction to try, he has no further jurisdiction in the matter except to bind over the defendant or dismiss the charge upon preliminary hearing.

It is not necessary for an arrest warrant to be issued before a criminal indictment can be returned by the grand jury. If you have evidence that supports the prosecution, that evidence may be the basis of an indictment by the grand jury regardless of whether an arrest warrant is in existence or not. [Williams v. South Carolina, 237 F.S. 360](#); [Morris v. South Carolina, 356 F. 2d 432](#).

A copy of this letter is being sent to the Legal Assistant of the Governor, who handles magisterial matters, for whatever inquiry he might wish to make with regard to the magistrate in this case charging fees for the withdrawal of criminal warrants.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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