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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

April 20, 2004

Kimberly V. Barr, Esquire  
City-County Complex NN  
180 N. Irby Street  
Florence, South Carolina 29501-3456

Dear Ms. Barr:

In a letter to this office you requested an opinion regarding the authority of a circuit solicitor to control the disposition of cases in municipal court through admittance to the pretrial intervention program in his or her office.

Prior opinions of this office have expressly recognized the discretionary authority of a circuit solicitor as to the acceptance of individuals into a pretrial intervention program (PTI). PTI is established pursuant to provisions codified at S.C. Code Ann. Sections 17-22-10 et seq. and authorizes the noncriminal disposition of charges pending against certain eligible defendants upon completion of the PTI program. Pursuant to Section 17-22-30 (A)

Each circuit solicitor shall have the prosecutorial discretion as defined herein and shall as a matter of such prosecutorial discretion establish a pretrial intervention program in the respective circuits.

The term "prosecutorial discretion" is defined by Section 17-22-20 as "...the power of the circuit solicitor to consider all circumstances of criminal proceedings and to determine whether any legal action is to be taken and, if so taken, of what kind and degree and to what conclusion." Pursuant to subsection (C) of Section 17-22-30, "a pretrial intervention program shall be under the direct supervision and control of the circuit solicitor..." As referenced by Section 17-22-30(B), with reference to the State's PTI program, "(t)he circuit solicitors are specifically endowed with and shall retain all discretionary powers under the common law."

An opinion of this office dated February 23, 2004 referenced that a PTI program "...is founded upon the Circuit Solicitor's broad prosecutorial discretion to dispose of criminal charges...Accordingly, the PTI program is placed 'under the direct supervision and control of the

circuit solicitor...” The opinion commented further that “(w)ithout question, the Solicitor, exercising his prosecutorial discretion, retains the authority to make the final determination regarding acceptance of an offender into the PTI program...”

In State v. Tootle, 330 S.C. 512, 500 S.E.2d 481 (1998), the South Carolina Supreme Court concluded that PTI eligibility is left to the prosecutor. In that case there was the question of whether a chief administrative judge had the authority to admit an applicant to PTI over a prosecutor’s objection where an offender made application to PTI pursuant to Section 17-22-100. That provision provides for application “to an intervention program or to the chief administrative judge of the court of general sessions.” The court ruled that pursuant to Section 17-22-100

...the chief administrative judge may give only preliminary approval. This approval is contingent upon the determination of eligibility under the two statutes governing PTI eligibility, S.C. Code Ann. Sections 17-22-50 and 60...a determination expressly left to the “pretrial office” which is under the direct supervision of the circuit solicitor...The judge has no discretion but must forward any application he receives to that office. Thus, Section 17-22-100 vests final approval in the circuit solicitor...

As to any statutes regarding the applicability of PTI to municipal court cases, no statute expressly comments on such question of applicability. However, Section 17-22-150 provides that upon successful completion of a PTI program, “...no evidence of the records pertaining to the charge may be retained by any municipal, county, or state entity or any individual, except as otherwise provided in Section 17-22-130.” Section 17-22-170 also provides that “(a)ny municipal, county, or state entity or any individual who unlawfully retains or releases information on an offender’s participation in a pretrial intervention program is guilty of a misdemeanor...” (emphasis added). Arguably, therefore, some statutory support exists for construing the applicability of PTI programs to municipal court cases.

As to a solicitor’s oversight authority as to cases in municipal court, no statute specifically addresses such responsibility. However, certain provisions indicate a solicitor’s widespread prosecutorial authority as to cases generally. S.C. Code Ann. Section 1-7-100 provides that

The Attorney General shall consult with and advise the solicitors in matters relating to the duties of their offices. When, in his judgment, the interest of the State requires it he shall:...

(2) Be present at the trial of any cause in which the State is a party or interested and, when so present, shall have the direction and management of such prosecution or suit. (emphasis added).

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In McLeod v. Snipes, 266 S.C. 415, 420, 223 S.E.2d 853 (1976), the Supreme Court noted that while the Attorney General is authorized to supervise the prosecution of criminal cases, "...it is a fact of common knowledge that the duty to actually prosecute criminal cases is performed primarily and almost exclusively by the solicitors in their respective circuits except in unusual cases or when the solicitors call upon the Attorney General for assistance." In its decision in Ex parte McLeod, 272 S.C. 373, 376, 252, 126 (1979), the Supreme Court indicated that the duties of the Attorney General as chief prosecuting officer are performed "...not only through his immediate staff, but through his constitutional authority to supervise and direct the activities of the solicitors or prosecuting officers located in each judicial circuit of the State." Such is consistent with S.C. Code Ann. Section 1-7-320 which provides that "(s)olicitors shall perform the duty of the Attorney General...."

Consistent with the above and as referenced by the Supreme Court in State v. Addis, 257 S.C. 482, 487, 186 S.E.2d 815 (1972), "(i)n every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he must and does have full control of the State's case." A prior opinion of this office dated March 5, 1990 indicated that "the decision as to what criminal charges to bring or the decision of whether or not to proceed with a given charge is a matter within the discretion of the solicitor."

Consistent with such, it appears that ultimately a circuit solicitor retains the ultimate prosecutorial authority as to any case within his or her circuit, including magistrate's and municipal court cases. Indeed, a prior opinion of this office dated November 7, 1990 concluded that "...a solicitor should be considered as having control of any criminal case brought in magistrate's court." Another opinion dated August 5, 1997 made a similar conclusion with regard to the question of the propriety of the prosecution of a magistrate court case by a private attorney. The opinion while recognizing that "the degree of the solicitor's involvement in any particular magistrate's court case is a matter within his discretion", concluded that a solicitor had control of any criminal case brought in magistrate's court. Reference was made to the pronouncement in Addis, supra, set forth above where the Supreme Court affirmed a solicitor's control of every criminal prosecution. See also: Op. Atty. Gen. dated April 22, 1974 (a solicitor is required to handle cases in magistrate's court when requested to do so).

Consistent with such, it is my opinion that a circuit solicitor is authorized to admit a defendant, charged with a municipal court offense, who is otherwise qualified, to the PTI program administered by his office. Ideally, coordination would be had with the municipal prosecutor. As to the arresting officer of such municipal case, Section 17-22-80 provides that

Prior to any person being admitted to a pretrial intervention program, the victim, if any, of the crime for which the applicant is charged and the law enforcement agency employing the arresting officer shall be asked to comment in writing as to whether

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or not the applicant should be allowed to enter an intervention program. In each case involving admission to an intervention program, the solicitor...shall consider the recommendations of the law enforcement agency and the victim, if any, in making a decision. (emphasis added).

With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General