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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

May 17, 2002

The Honorable Jane Pittman Modla  
Judge, Rock Hill Municipal Court  
120 East Black Street  
Rock Hill, South Carolina 29730

**Re: S.C. Code Ann. §16-17-430**

Dear Judge Modla:

First, I must apologize for the delay in responding to your request for clarification regarding S.C. Code Ann. § 16-17-430. As you may be aware, the State of South Carolina has experienced significant budget reductions due to declining revenue for the State. As a result of these reductions this Office has been forced to reallocate resources and personnel leaving certain divisions at less than full-operating capacity. We appreciate your patience in this regard.

In your correspondence, you indicate that you are in need of an opinion on the following matter:

An Unlawful Use of Telephone warrant, §16-17-430, issued by a Municipal Court Judge under the old felony provision was dismissed at a Preliminary Hearing. The Circuit Solicitor directly indicted the warrant (because victim had not received notice of the Preliminary Hearing.) Now, because of the law change, the Circuit Solicitor wants to remand the case to the Municipal Court. The problem concerns the charging papers. The warrant has been dismissed. This court does not prosecute indictments. This Court is hesitant to reissue a warrant on the same charge and have the defendant rearrested.

A municipal judge need not issue a warrant to confer subject matter jurisdiction for a charge that has already been indicted by the grand jury. A grand jury may indict for any crime not within the exclusive jurisdiction of magistrate or municipal court, whether or not there has been an arrest warrant issued by a magistrate or municipal judge. State v. Walker, 101 S.E.2d 826 (1958). Offenses within the exclusive jurisdiction of magistrate court are criminal offenses in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days. S.C. Code Ann. § 22-3-540. The punishment for S.C. Code Ann. § 16-17-430 allows for a fine of up to five hundred dollars. Therefore, S.C. Code Ann. § 16-17-430 is not within the exclusive jurisdiction

*Respectfully,*

The Honorable Jane Pittman Modla

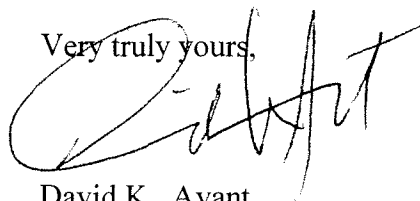
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of magistrate's court and an indictment by the grand jury would properly confer subject matter jurisdiction of the accused in municipal court. Further, when a grand jury has returned an indictment for an offense over which the circuit court and the municipal/magistrate's court have concurrent jurisdiction, the court of general sessions may dispose of the case or the case may be remanded to municipal/magistrate's court. State v. McClenton, 37 S.E. 819 (1901); See also *South Carolina Bench Book for Magistrates and Municipal Court Judges*, Second Edition. When a case has been directly indicted, as is the situation you have described, the proper procedure is for the issuance of a bench warrant. State v. Walker, 101 S.E.2d at 829. This would appear to be the correct procedure regardless of where the case is disposed of (i.e. municipal or circuit court).

I hope the information provided herein proves helpful. This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor published in a manner of a formal opinion.

Very truly yours,



David K. Avant  
Assistant Attorney General

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