

The State of South Carolina



Office of the Attorney General

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August 25, 1993

R. L. McCurdy, Esquire
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South Carolina Court Administration
P. O. Box 50447
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Dear Bob:

In a letter to this Office you questioned whether a magistrate may impose a fine or jail time and order a defendant to make restitution to the victim of a fraudulent check violation. You stated

S.C. Code § 34-11-90(C) requires a court to suspend the imposition or execution of the sentence for a first offense fraudulent check conviction upon a showing of proof of restitution and the payment of court costs. This suspension of sentence is discretionary for second and subsequent offenses. However, some magistrates order restitution for a fraudulent check conviction, not as a condition of the suspension of a sentence, but in addition to the imposition of a fine or jail time. This practice has been questioned.

You particularly questioned whether S. C. Code Section 16-3-1530(D)(3), a provision of the Victim's and Witness's Bill of Rights, which authorizes restitution would be applicable to a magistrate's court.

The Victim's and Witness's Bill of Rights, S.C. Code Sections 16-3-1510 et seq., does not specifically reference its applicability to a magistrate's court. Moreover, several aspects of such provisions are inconsistent with a magistrate's court and procedure in that court. S.C. Code Sections 16-3-1530(C) and 16-3-1550(B) refer to the solicitor prosecuting or handling a particular case. As you are aware, solicitors typically do not

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prosecute the majority of magistrates' court cases. As to the restitution provision itself, Section 16-3-1530(D)(3) states

A victim has the right to receive restitution for expenses or property loss incurred as the result of the crime. The judge shall order restitution at every sentencing for a crime against person or property or as a condition of probation or parole.

S.C. Code Section 22-3-800 specifically states that magistrates are not given any authority to place a defendant on probation. Section 16-3-1550(A) in providing for a victim impact statement states "(t)he provisions of this section govern the disposition of any offense within the jurisdiction of the General Sessions Court, excluding any crime for which a sentence of death is sought" No reference is made to a magistrate's court case. Therefore, in the absence of legislative clarification or specific provision for applicability to a magistrate's court proceeding, it does not appear that Section 16-3-1530(D)(3) which authorizes restitution would apply to a magistrate's court.

As to your question regarding whether there is authority for a magistrate to impose a fine or jail time and order a defendant to make restitution to the victim for a fraudulent check conviction, included in recently-enacted legislation, R.201, is an amendment to S.C. Code Section 22-3-550. Such provision states that in addition to a magistrate's authority to impose a sentence of a fine or term of imprisonment "... a magistrate may order restitution he considers appropriate." It appears that consideration could be given to utilizing such authority to impose restitution in a fraudulent check case.

With kind regards, I am

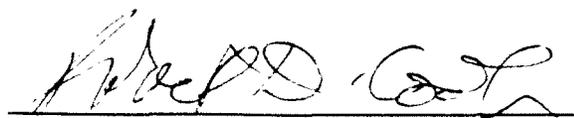
Very truly yours,



Charles H. Richardson
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