

# The State of South Carolina



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June 9, 1992

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Dear Motte:

In a letter to this Office you raised several questions arising from Act No. 310 of 1992 which establishes a procedure for the transfer of specified criminal cases from the general sessions docket to a magistrate or municipal court docket. Such procedure is effective from July 1, 1992 until July 1, 1993.

Act No. 310 states in part:

Notwithstanding the provisions of Sections 22-3-540 and 22-3-550...a criminal case, the penalty for which the crime in the case does not exceed five thousand dollars or one year imprisonment, or both, may be transferred from general sessions court if the provisions of this section are followed.

(B) The solicitor ... may petition the chief administrative criminal court judge in the circuit to transfer one or more cases from the general sessions court docket to a docket of a magistrate's or municipal court in the circuit for disposition... A case transferred to a magistrate's or municipal court not disposed of in one hundred eighty days from the date of transfer automatically reverts to the docket of the general sessions court....

You first questioned the method magistrate and municipal court judges should use for selecting juries for trials transferred from the general sessions docket. You asked

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whether they should be empaneled pursuant to Sections 22-2-50 et. seq. and Sections 14-25-125 et. seq. of the Code which provide the procedure for empanelling magistrates' and municipal court juries. You also asked whether the increase in criminal jurisdiction provide magistrates and municipal judges the authority to place on probation those defendants convicted of offenses transferred from general sessions court.

As referenced above, Act No. 310 provides for the transfer of cases from the general sessions docket to a docket of a magistrates' or municipal court. The only provisions which comment on procedure as to the transferred cases are those which state that transfer of such cases is initiated by petition of the solicitor, such cases must be prosecuted by the solicitor's office, an adequate record must be made by the solicitor's office and any fines imposed must be distributed as if they were imposed by a circuit court.

In reviewing your questions this Office has been informed by individuals familiar with the history of Act No. 310 that there were intentions that in situations where cases are transferred from the general sessions docket to a magistrate's or municipal court docket that such cases be handled in a manner consistent with the procedure attendant to cases tried by a general sessions court. However, based upon the express language contained in the legislation, a court could construe Act No. 310 as not supportive of such original intent. In other words, a court could interpret the statute as written presently as supportive of applying the procedures attendant to a magistrate's court, rather than general sessions. Of course, if the procedural mechanism of applying procedures consistent with the general sessions court for cases transferred is favored, legislation specifically providing for such should be sought. Such legislation would obviously clarify the situation and avoid potential problems as to how these cases should be handled.

It is generally stated:

Where an order of removal of a case from one court to another is properly made, the former court is thereby divested of jurisdiction and the jurisdiction of the latter court attaches and the case proceeds as if originally instituted there, unless, by virtue of some statutory provision, a transfer of the case has the affect of limiting the issues... All

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subsequent proceedings in the court to which a case was transferred must conform to the practice and procedure of that court. (emphasis added)

21 C.J.S. Courts, Section 199 p.231. In providing for the transfer of cases, Act No. 310 is similar to Section 20-7-430 of the Code which provides for the transfer of jurisdiction by certain courts of cases involving juveniles. Where cases are transferred, the court to which the case is transferred proceeds in the same manner as other cases within that court's jurisdiction.

As noted, Act No. 310 states "(n)otwithstanding the provisions of Sections 22-3-540 and 22-3-550" the referenced criminal cases may be transferred to a magistrate's or municipal court. Sections 22-3-540 and 22-3-550 provide the jurisdictional limits for criminal cases which may be tried in the magistrate's court.<sup>1/</sup> Act No. 310 expands the jurisdiction of magistrates' and municipal courts as to criminal cases. Such expansion is consistent with Article 1, Section 11 of the State Constitution which authorizes the expansion of the criminal jurisdiction of a magistrate's court. See: Opinion of the Attorney General dated December 5, 1989.

With reference to your particular questions, it appears that upon transfer of a case from the general sessions court docket to the docket of a magistrate's or municipal court, the case would be tried in the same procedural manner as if it had originally been within the magistrate's or municipal court's jurisdiction. Therefore, magistrates and municipal judges should utilize the procedures set forth in Sections 14-25-125 et. seq. and 22-2-50 et. seq. in selecting the juries for trials in cases transferred to their courts from a general sessions court docket.

As to your question regarding whether magistrates and municipal court judges have authority to place convicted offenders on probation, generally pursuant to Section 22-3-800 of the Code, magistrates are empowered to suspend a sentence imposed but are not empowered to place any defendant on probation. See: Opinion of the Attorney General dated July 21, 1986. Pursuant to Section 14-25-75 of the Code, a municipal judge "...may suspend sentences imposed by

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<sup>1/</sup> Pursuant to Section 14-25-45 of the Code a municipal court has the same jurisdiction as a magistrate as to criminal cases.

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him upon such terms and conditions as he deems proper including, without limitation, restitution or public service employment." Act No. 310 in authorizing the transfer of general sessions cases to the docket of a magistrate's or municipal court does not grant any additional sentencing authority to these courts. Therefore, absent such a specific grant of sentencing authority, the increase in criminal jurisdiction for these courts does not appear to authorize a magistrate or municipal court to place on probation defendants convicted of offenses transferred from general sessions court.

You also asked whether the clerk of the circuit court is responsible for the disposition of any fine imposed in a magistrate's or municipal court in a case transferred from the general sessions court. Act No. 310 states in part:

Notwithstanding any other provision of law, all fines imposed by a magistrate or municipal judge presiding pursuant to this Section must be distributed as if the fine were imposed by a circuit court pursuant to Section 20-7-1510. However, these fines are also subject to the provisions of Section 56-5-2940...

Section 20-7-1510 provides for the manner of distribution of fines, forfeitures and other revenues generated by the circuit courts. Section 56-5-2940 states in part that of the minimum fines imposed pursuant to such provision for second and third offense driving under the influence cases, two hundred fifty dollars is payable to the Victim's Compensation Fund.

Generally, pursuant to Section 22-1-70 of the Code all fines and penalties imposed and collected by a magistrate resulting from criminal cases are transmitted to the county treasurer for county purposes. Section 14-25-85 of the Code provides that all fines generated in the municipal court are paid by the clerk of that court to the municipal treasurer, presumably for municipal purposes. As to fines imposed by a magistrate or municipal judge pursuant to Act No. 310, all such fines must be distributed in accordance with Sections 20-7-1510 and 56-5-2940. In the absence of legislation expressly stating that the clerk of the circuit court is responsible for transmitting fines imposed in a magistrate's or municipal court for a case transferred to the docket of

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that court from general sessions, I am unaware of any such responsibility for the clerk in such regard. Of course, while the clerk of the circuit court has no statutorily-imposed responsibilities in such regard, we are unaware of any prohibition to any assistance by the clerk with the consent of the magistrate as to such fines.

If there is anything further, please advise.

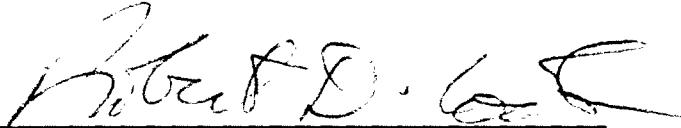
Sincerely,



Charles H. Richardson  
Assistant Attorney General

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