

The State of South Carolina

3774-Subray



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December 5, 1989

George A. Markert, Assistant Director
South Carolina Court Administration
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Dear George:

In a letter to this Office you raised several questions pursuant to Sections 47-3-710 et seq. of the Code, Article 13 of Title 47, Chapter 3, which deal with the regulation of dangerous dogs.

Section 47-3-760 sets forth the penalties for violations of such provisions. For a first offense, a fine of not more than two hundred dollars or a term of imprisonment not exceeding thirty days is provided; for a second or subsequent offense, a fine of one thousand dollars, none of which may be suspended, is provided. Subsection (d) of such provision states "all violations of this article are within the magistrate's jurisdiction." You have asked whether magistrates have jurisdiction to try second or subsequent offense "dangerous dogs" criminal cases.

Generally, pursuant to Section 22-3-550 of the Code, magistrates have jurisdiction of offenses subject to penalties of a fine not exceeding two hundred dollars or a term of imprisonment not exceeding thirty days. Formerly, Article I, Section 11 of the State Constitution provided that an individual may not be tried for an offense where the punishment exceeded a fine of two hundred dollars or a term of imprisonment for thirty days unless he was indicted. As a result, offenses which exceeded such jurisdictional level were within the jurisdiction of the court of general sessions. However, pursuant to Act No. 8 of 1989, Article I, Section 11 was amended to provide that "no person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court..." unless indicted. As a result, the jurisdiction of a magistrate was potentially broadened.

George A. Markert, Assistant Director
Page 2
December 5, 1989

As referenced, Section 47-3-760 specifically provides that violations of Sections 47-3-710 et seq. are within the jurisdiction of the magistrate's court. Therefore, even though the penalties exceed the 30 day term of imprisonment/\$200.00 fine typically considered the limit of a magistrate's jurisdiction, such specific grant of jurisdictional authority, which is consistent with Article I, Section 11 of the State Constitution, would authorize all violations of Sections 47-3-710 et seq. to be within the jurisdiction of a magistrate's court.

You also asked whether magistrates have civil jurisdiction to render a judgment in an amount greater than \$2,500.00 against owners of dangerous dogs for expenses which are necessitated by the seizure of the dog for the protection of the public or for medical expenses which are incurred as the result of an attack by a dangerous dog even if these expenses exceed \$2,500.00. Pursuant to Section 22-3-10 of the Code, typically magistrates have civil jurisdiction in cases where the sum or damages claimed do not exceed \$2,500.00. However, a magistrate's jurisdiction as to certain landlord-tenant matters is not limited to a specific monetary amount pursuant to subsection (10) of such provision.

Pursuant to Section 47-3-750

(i)n the event a law enforcement agent has probable cause to believe that a dangerous dog is being harbored or cared for in violation of Section 47-3-720 or 47-3-740, he may petition the magistrate having jurisdiction to order the seizure and impoundment of the dangerous dog while the trial is pending;.... (emphasis added.)

Also, pursuant to Section 47-3-760(c)

any person found guilty of violating this article shall pay all expenses, including shelter, food, veterinary expenses for boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public and other expenses as may be required for the destruction of the dog. Furthermore, anyone found guilty of violating this article shall pay any medical expenses incurred by the victims as a result of an attack by a dangerous dog.

As noted previously, subsection (d) of such provision states that a magistrate has jurisdiction of all violations of such provision.

George A. Markert, Assistant Director

Page 3

December 5, 1989

As referenced in our response to your first question, all violations of Sections 47-3-710 et seq. are within the jurisdiction of a magistrate. The provisions of subsection (c) of Section 47-3-760 state that individuals found guilty of violating these provisions must pay all expenses incurred as a result of the seizure and destruction of the dangerous dog and any medical expenses incurred as a result of an attack by a dog. In the opinion of this Office, a magistrate would have jurisdiction to render a judgment in an amount greater than \$2,500.00 for the referenced expenses in association with a criminal proceeding brought pursuant to Sections 47-3-710 et seq. Otherwise, there would be the situation where the magistrate would have trial jurisdiction over the criminal case but any relief for expenses would have to be sought from another court. It appears to be the legislative intent to make all proceedings pursuant to such provisions within the jurisdiction of a magistrate's court.

You also asked whether municipal courts have jurisdiction to try second or subsequent "dangerous dog" criminal cases. Pursuant to Section 14-25-65 of the Code, a municipal judge "...may impose a fine or imprisonment, or both, not to exceed two hundred dollars or thirty days." Furthermore, pursuant to Section 14-25-45 of the Code, a municipal court judge has "...all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." Such provision further states that municipal court judges have no jurisdiction over civil cases.

Generally, where statutes are clear and unambiguous, there is no room for construction and the terms of the statutes must be given their literal meaning. Duke Power Co., v. S.C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987). Moreover, statutes in pari materia must be construed together and reconciled if possible so as to render all provisions operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Reading Sections 14-25-45 and 47-3-760 together results in the construction that municipal courts would have the same jurisdiction as magistrates as to "dangerous dogs" criminal cases. See: State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). Therefore, municipal courts would appear to have jurisdiction to try second or subsequent offense "dangerous dog" cases.

In your remaining question you asked whether municipalities have the authority to enact municipal ordinances substantially similar to Sections 47-3-710 et seq. including penalty provisions setting forth fines of \$1,000.00 for second or subsequent offenses. Section 5-7-30 of the Code provides authority for municipalities to enact ordinances not inconsistent with the general law of this State. However, pursuant to such provision municipalities "...may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding two hundred dollars or imprisonment

George A. Markert, Assistant Director

Page 4

December 5, 1989

not exceeding thirty days." Therefore, municipalities would not be authorized to enact ordinances similar to Sections 47-3-710 et seq. where the penalty provisions establish fines of \$1,000.00.

If there is anything further, please advise.

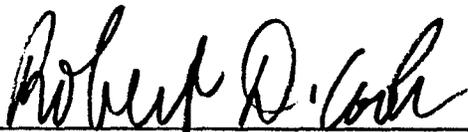
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:



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