

1977 S.C. Op. Atty. Gen. 303 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-379, 1977 WL 24716

Office of the Attorney General

State of South Carolina

Opinion No. 77-379

December 1, 1977

*1 TO: Neal Forney
Assistant Director
S. C. Court Administration

QUESTION PRESENTED:

In civil cases, is it proper for a magistrate to endorse for service a summons and complaint in an action within the trial jurisdiction of the magistrate court where the cause of action arose in another county and the summons and complaint were issued by a magistrate in the foreign county?

AUTHORITIES:

Sections 22-3-10, 22-5-190, 22-3-210, 15-7-10, 15-7-20, 15-7-30 of the code;

[Baker v. Irvine](#), 62 S.C. 293, 40 S.E. 672 (1902);

[Hall, et al. v. Sullivan](#), 70 S.C. 397, 50 S.E. 27 (1905);

[Ragin v. Northwestern R. Co.](#), 108 S.C. 171, 93 S.E. 860 (1971).

DISCUSSION:

Section 22-3-10 establishes the extent of a magistrate's civil jurisdiction. Generally, in civil actions, a magistrate does not have jurisdiction over a defendant unless he is a resident of the magistrate's county. In [Hall, et al. v. Sullivan](#) and [Ragin v. N.W.R.Co.](#) the court held that in order for a magistrate to have jurisdiction the defendant must be a resident of the county. This residency requirement is necessary regardless of where the cause of action arose ([Baker v. Irvine](#)), except in certain circumstances set forth in Sections 15-7-10 and 15-7-20.

The residency requirement of the defendant applies only to civil cases. Section 22-5-190 prescribes the manner in which magistrates may endorse and execute foreign criminal warrants against residents of their respective counties for crimes allegedly committed elsewhere. However, the provisions of Section 22-5-190 purport to apply only to the service of foreign criminal warrants, not civil process. Accordingly, the endorsement and execution of foreign civil process in the manner prescribed for criminal matters under Section 22-5-190 would not be appropriate. Also see Section 22-3-210, which declares that a defendant's mere failure to appear will not be deemed a waiver of any objection he may have to the magistrate's jurisdiction when the civil action is brought in the wrong county.

CONCLUSION:

Section 22-3-10, 15-7-30, and case law generally require that the defendant must reside in the county in order for the magistrate to have jurisdiction, regardless of where the cause of action arose. Therefore, it is not proper in civil actions, unless otherwise

provided, for a magistrate to endorse for service complaints and summons in pleadings from foreign counties which claim jurisdiction.

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