

1979 S.C. Op. Atty. Gen. 104 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-80, 1979 WL 29085

Office of the Attorney General

State of South Carolina

Opinion No. 79-80

June 12, 1979

***1 SUBJECT: Executions, Constables, Judgments, Magistrates**

- (1) Magistrates have the authority to issue executions on judgments rendered in their courts.
- (2) The provisions of [Section 15-39-10 of the 1976 Code](#) of Laws concerning executions are not applicable to magistrate courts.
- (3) [Section 22-3-320 of the 1976 Code](#) of Laws does not require that all judgments of the magistrate court be docketed with the clerk of the circuit court if execution is requested.
- (4) Magistrates' constables have jurisdiction to sell property taken under execution. However, the provisions of [Section 15-39-610 et seq.](#) of the Code of Laws are inapplicable to sales conducted by a magistrate's constable.

TO: Neal Forney
Assistant Director
South Carolina Court Administration

QUESTIONS:

- (1) Do magistrates have jurisdiction to issue executions on judgments rendered in their courts pursuant to [Section 22-3-310 of the Code](#) of Laws?
- (2) Are the provisions of [Section 15-39-10 of the Code](#) of Laws pertaining to executions applicable to magistrate courts?
- (3) Does [Section 22-3-320 of the Code](#) of Laws require that all judgments of the magistrate courts must be docketed with the clerk of the circuit court if execution is requested?
- (4) Do magistrates' constables have jurisdiction to sell property taken under execution pursuant to the provisions of [Section 15-39-610 et seq.](#) of the Code of Laws?

STATUTES:

[Sections 22-3-310, 15-39-10, et seq., 22-3-300, 22-3-320, 22-7-10\(11\), 15-39-610 et seq., 22-9-110, 22-9-80](#), Code of Laws of South Carolina (1976).

DISCUSSION:

There is no express statutory authorization for magistrates to issue executions on judgments rendered in their courts. However, such authorization can be inferred from a review of conflicting statutory provisions. [Section 22-3-310 of the 1976 Code](#) of Laws states in part that:

(e)xecution may be issued on a judgment heretofore or hereafter rendered in a magistrate's court at any time within three years after the rendition thereof and shall be returnable sixty days from its date.

The above provision found in the chapter relating to magistrates' courts is in conflict with [Section 15-39-20 of the 1976 Code](#) of Laws which provides that parties in whose favor judgments are given may at any time within ten years after the judgment is entered proceed to enforce the judgment.

As to any question of conflict between the above two sections, such may be resolved by a determination that [Sections 15-39-20](#) applies only to those judgments issued in a magistrate's court which have been filed and docketed with the clerk of the circuit court pursuant to [Sections 22-3-300 and 22-3-320 of the 1976 Code](#) of Laws while [Section 22-3-310](#) applies to judgments rendered in a magistrate's court where it is intended that a magistrate issue the execution. However, as stated, if a judgment is docketed in the circuit court, then execution would issue from that court and not by the magistrate.

*2 With reference to the above, it appears evident that magistrates do in fact have jurisdiction to issue execution to enforce judgments rendered in their courts pursuant to [Section 22-3-310](#). Further evidence of the authority of a magistrate to issue execution on a judgment is found in [Section 22-7-10\(11\)](#) of the 1976 Code of Laws which provides for a fee for a magistrate for issuing an execution.

As to your question of whether the provisions of [Sections 15-39-10 et seq.](#) of the 1976 Code of Law pertaining to executions are applicable to a magistrate's court, as was indicated above, a review of such sections reveals a conflict in those sections and the sections specifically applicable to magisterial courts. Therefore, such sections are apparently inapplicable to executions issued by a magistrate's court. While there appears to be authority for a magistrate to issue execution on a judgment rendered in his court, [Sections 15-39-10 et seq.](#) apparently are applicable only to judgments docketed with the circuit court.

As to your third question, [Section 22-3-320](#) states:

(i)f the judgment be docketed with the clerk of the circuit court, the execution shall be issued by him to the sheriff of the county and have the same effect and be executed in the same manner as other executions and judgments of the circuit court.

Inasmuch as the referenced section states in part that 'if the judgment be docketed with the clerk of the circuit court, the execution shall be issued by him' and the above paragraphs indicated that magistrates do in fact have jurisdiction to issue executions, it is not necessary that all executions be docketed with the clerk of the circuit court if execution is requested. [Sections 22-3-300 and 22-3-320](#) allow, but do not require, a magistrate's court judgment to become a judgment of the circuit court. However, as was indicated in another opinion of this same date, the preferred procedure is to have all judgments docketed with the clerk of court and thus become judgments of the circuit court.

As to the question put forth as to whether magistrates' constables have jurisdiction to sell property taken under execution pursuant to the provisions of [Section 15-39-610 et seq.](#), this office in the above-referenced opinion of this same date also stated that [Sections 15-39-610 et seq.](#) are inapplicable to sales conducted by a magistrate's constable. The opinion further stated:

. . . while there appears to be some authority for a magistrate's constable to conduct a sale to satisfy a judgment, the procedure for conducting a sale is not so clearly defined and potential problems exist due to the lack of of a clear legislatively defined procedure. Such problems however could be more easily avoided by allowing the sheriffs to conduct such sales . . . [Sections 15-39-610 et seq.](#) clearly define the procedures for judicial sales conducted by sheriffs.

CONCLUSION:

(1) It may be inferred by [Section 22-3-310](#) that magistrates have the authority to issue executions on judgments rendered in their courts.

*3 (2) The provisions of [Section 15-39-10 of the 1976 Code](#) of Laws concerning executions are not applicable to magistrate courts but instead are applicable to judgments docketed with the circuit court.

(3) [Section 22-3-320 of the 1976 Code](#) of Laws allows but does not require that all judgments of the magistrate court be docketed with the clerk of the circuit court if execution is requested. The preferred procedure however is to have such judgments docketed in the circuit court.

(4) Apparently magistrates' constables do have jurisdiction to sell property taken under execution. However the provisions of [Section 15-39-610 et. seq.](#) are inapplicable to any such sale by a constable and therefore it is preferred that any such sales be conducted by a sheriff.

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