

1978 WL 35190 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
October 27, 1978

***1 RE: Horry County Dog and Animal Ordinance No. 10-78**

Mr. Neal Forney
Assistant Director
South Carolina Court Administration
P. O. Box 11788
Columbia, S. C. 29211

Dear Neal:

In a recent letter to this Office you asked several questions in reference to the Horry County Dog and Animal Ordinance No. 10-78. Such questions were:

1. Is the Notice of Violation provided for by Section 4 of this Ordinance a sufficient charging paper for the magistrate to dispose of the case or is it necessary that an arrest warrant be issued?
2. Does the absence of an imprisonment provision of Section 4 mean that the magistrate can only impose a fine without the alternative of imprisonment?
3. Does the, ‘ . . . \$100, or by imprisonment for a term not to exceed thirty (30) days or both . . . ’ remove the trial jurisdiction of the case from the magistrate court to the court of general sessions?

As to question 2, a recent amendment to Section 4 of the ordinance states in part that as to a person convicted of violating any provision of the ordinance, such person ‘ . . . shall pay a fine not to exceed \$100.00 or imprisonment (sic) not to exceed thirty days.’ Therefore, it appears that a response to question 2 is unnecessary. As to question 3, such quoted penalty provision was found in Section 10 of the ordinance; however such section has been deleted by virtue of the amendment to the ordinance, so therefore an answer to question 3 likewise appears unnecessary.

As to the first question, Section 4 as amended states that the notice of the violation of the ordinance ‘ . . . shall be a form approved by the Attorney General’ and shall contain certain information. However, I am unaware of any such forms being approved by this Office. Furthermore, it is the opinion of this Office that the use of such a summons would be insufficient to give a magistrate jurisdiction to consider a case brought pursuant to the ordinance. [Section 22-3-710 of the 1976 Code](#) of Laws states:

All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.

In accordance with such, this Office has held in a previous opinion, Opinion No. 3845 dated February 28, 1970, that Where an arrest has been made without a warrant, the obtaining of an arrest warrant is necessary to vest a magistrate's court with jurisdiction over the offense as charged, except in case of official summons.

By statute, state game wardens and highway patrolmen are authorized to issue summons in lieu of regular arrest warrants. However, I am unaware of any similar provision authorizing the use of a summons as indicated by the referenced

ordinance which would give the magistrate jurisdiction to consider a case brought pursuant to the ordinance. Thus in the opinion of this Office, an arrest warrant must be issued to vest the magistrate with jurisdiction to consider such a case.

*2 With best wishes, I am
Very truly yours,

Charles H. Richardson
Assistant Attorney General

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