

1978 S.C. Op. Atty. Gen. 214 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-191, 1978 WL 22659

Office of the Attorney General

State of South Carolina

Opinion No. 78-191

November 13, 1978

**\*1 SUBJECT: Magistrates, Contempt**

Magistrates may punish all behavior within the definition of contemptuous exhibited in their presence while performing the duties of their office as contempt of court.

TO: Neal Forney  
Assistant Director  
South Carolina Court Administration

QUESTION:

Is the power of the magistrate to punish for contempt of court limited to trial situations or does it include such activities as bond proceedings, preliminary examinations, and warrant issuing proceedings?

STATUTES AND CASES:

Sections 22–3–980, 17–25–350, 22–3–950 of the 1976 Code of Laws; [Lining v. Bentham](#), 2 S.C.L. (2 Bay) 1 (1796); [State v. Johnson](#), 3 S.C.L. (1 Brev.) 155 (1802).

DISCUSSION:

As referenced in your letter requesting this opinion, certain specified statutes, such as Section 22–3–980 of the 1976 Code of Laws relating to jurors and [Section 17–25–350 of the 1976 Code of Laws](#) relating to fines, provide magistrates with the power to punish for contempt of court. Furthermore, in [Section 22–3–950 of the 1976 Code of Laws](#), it is specifically provided that:

Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish any person who shall, in the presence of the court, offer an insult to the magistrate or a juror or who shall be wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially, as for a contempt, by fine and imprisonment, either or both, not exceeding twenty dollars fine and twelve hours imprisonment.

Thus, as indicated, magistrates may punish for contemptuous actions ‘in his court while holding the same’.

In your question you asked whether the power of a magistrate to punish for contempt of court is limited to trial situations or does it include other activities, such as bond proceedings, preliminary examinations, and warrant issuing proceedings. A review of early court decisions appears to indicate wide authority. In [Lining v. Bentham](#), 2 S.C.L. (2 Bay) 1 (1796) a justice of the peace had ordered a man imprisoned for accusing the justice of gross impartiality and abuse of power during a bail proceeding. The South Carolina Constitutional Court of Appeals affirmed the action and referenced ‘. . . the power of a magistrate to commit for insults or contempts . . .’ offered in the presence of the court. The Court by dictum stated however that as to any contempts offered out of the presence of the court, such ‘ought to’ be prosecuted

by indictments. (More recent cases reference the fact that for contempts committed out of the presence of the court, ‘constructive contempt’, such should be initiated pursuant to a rule to show cause. [State v. Weinberg](#), 229 S.C. 286, 92 S.E.2d 842 (1956); [State v. Johnson](#), 249 S.C. 1, 152 S.E.2d 669 (1967).) In [State v. Johnson](#), 3 S.C.L. (1 Brev.) 155 (1802) a justice of the peace had ordered a particular woman imprisoned for an unspecified period of time for coming to his office, treating him contemptuously and threatening him. The Charleston Constitutional Court held that a 1731 Act which provided punishment by fine instead of imprisonment for contempt of court and which was argued to apply did not apply to a justice of the peace. Instead, it was stated that:

\*2 Justices of peace have a power derived from the common law, and necessarily attached to their offices, of committing and confining for gross behavior in their presence while engaged in the proper discharge of their duties, as public magistrates. This power has always been recognized and respected, as lawful, and indispensably requisite, for the maintenance of their offices and jurisdiction . . . 1 Brev. at 159

Therefore, with reference to the above case authority indicating broad contempt powers, it is the opinion of this Office that [Section 22–3–950](#), *supra*, which grants a magistrate the power to enforce the observance of decorum in his court while holding the same should be construed to allow the magistrate to punish for all behavior within the definition of contemptuous done in his presence while in the performance of the duties of his office.

CONCLUSION:

Pursuant to [Section 22–3–950](#), magistrates may punish all behavior within the definition of contemptuous done in their presence while performing the duties of their office as contempt of court. This would include contemptuous actions during bond proceedings, preliminary examinations, and warrant issuing proceedings.

Charles H. Richardson  
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