

1976 S.C. Op. Atty. Gen. 275 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4422, 1976 WL 23039

Office of the Attorney General

State of South Carolina

Opinion No. 4422

August 11, 1976

*1 Section 43–51 of the 1962 Code, as amended by Act 690 of 1976, does not grant exclusive original jurisdiction to the magistrate courts.

The Civil and Criminal Court of Spartanburg County will be abolished on July 1, 1979, pursuant to Article VII, Section 5 of Act 690 of 1976.

TO: Honorable Richard W. Riley
Senator
Greenville and Laurens Counties

QUESTIONS PRESENTED:

I.

Does Article IV of Act 690 of 1976, the Judicial Reform Act, grant exclusive civil jurisdiction to the magistrate courts in the twelve categories listed in Section 2 of Article IV?

II.

Will the Civil and Criminal Court of Spartanburg County be abolished on July 1, 1979, pursuant to Article VII, Section 5 of Act 690 of 1976, the Judicial Reform Act?

AUTHORITIES:

Article V, Section 7, Constitution of the State of South Carolina, 1895, as amended Act 300 of 1870, 14 Statutes at Large p. 423 Sections 15–1671, 15–1671.5, 15–1571.7, 43–51, 43–68, 1962 Code of Laws of South Carolina, as amended. [Holloway v. Holloway](#), 203 S.C. 339, 27 S.E.2d 457 (1943).

[Rhodes v. Railroad](#), 6 S.C. 385 (1875). [State v. Fillebrown](#), 2 S.C. 404 (1871). [Stegal v. Bolt](#), 11 S.C. 522 (1879). Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895.

DISCUSSION OF QUESTION I:

Article V, Section 7 of the Constitution of the State of South Carolina, 1895, as amended, reads as follows:
The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.

As stated in the Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895 at page 65, it should be noted ‘that the original jurisdiction in civil and criminal cases given to the Circuit Court is not exclusive,

therefore, the General Assembly may grant similar powers to other courts.’ In fact, by virtue of the phrase ‘except those cases in which exclusive jurisdiction shall be given to inferior courts,’ the Constitution specifically provides that courts of inferior jurisdiction may be granted not only concurrent but also exclusive original jurisdiction over certain cases. One example of such a grant of exclusive jurisdiction may be found in Section 43–68, 1962 Code of Laws of South Carolina, as amended, which states:

Magistrates shall have exclusive jurisdiction of all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days, . . .

Section 43–51 of the 1962 Code, as amended by Act 690 of 1976, the Judicial Reform Act, sets forth the civil jurisdiction of the magistrate's courts by stating:

Magistrates shall have civil jurisdiction in the following cases:

The Section then enumerates twelve categories to which magistrate's courts' civil jurisdiction shall extend.

*2 This jurisdictional statute remains almost totally unchanged from its original form as enacted in 1870 (1870 (14) 423) and as interpreted by the Supreme Court of this State, Section 43–51 vests the magistrate's courts with concurrent, not exclusive, original jurisdiction in the twelve listed categories. See: [State v. Fillebrown, 2 S.C. 404 \(1871\)](#); [Rhodes v. Railroad, 6 S.C. 385 \(1875\)](#); [Stegal v. Bolt, 11 S.C. 522 \(1879\)](#).

CONCLUSION (Discussion of Question I):

Since Section 43–51 has not been significantly amended since the decisions in these cases, and because the Constitution presently does not mandate a grant of exclusive original jurisdiction to the magistrate's courts, it is the opinion of this Office that Section 43–51 of the 1962 Code, as amended by Act 690 of 1976, grants concurrent and not exclusive original jurisdiction to the magistrate's courts over the twelve categories of cases listed in the section.

DISCUSSION OF QUESTION II:

Article VII of Act 690 of 1976, the Judicial Reform Act, deals with the transition from the existing court system to the unified court system as provided for in the Act. Section 1 deals with the abolition of existing family, juvenile and domestic relations courts. Sections 2 and 3 deal with those courts that are abolished by Section 1, but that also exercise civil or criminal jurisdiction in addition to their family court jurisdiction. Section 4 provides for magistrate and municipal courts. Section 5 specifically deals with ‘county courts and other similar courts with jurisdiction inferior to the circuit court’ and masters-in-equity.

The Civil and Criminal Court of Spartanburg County was created by Act of the General Assembly with jurisdiction concurrent with the county and circuit courts in ‘all cases in law when the value of the property in controversy or the amount claimed does not exceed the sum of twenty-five hundred dollars.’ Section 15–1671.7, 1962 Code. The Court also has the same criminal jurisdiction as the Spartanburg County magistrate's courts. Section 15–1671.5, 1962 Code.

The Civil and Criminal Court of Spartanburg is neither a family, juvenile or domestic relations court nor a magistrate's court. The test to be used to determine whether it is a court inferior to the circuit court was stated in [State v. Fillebrown, supra](#):

All courts from which an appeal lies are inferior Courts in relation to the appellate Court, before which their judgments may be carried, but they are not, therefore, inferior Courts, in the technical sense of those words. They apply to Courts of a special and limited jurisdiction, which are elected on such principles that their judgments, taken alone, are entirely disregarded, and the proceedings must show their jurisdiction. [2 S.C. at 407](#);

and in [Holloway v. Holloway](#), 203 S.C. 339, 27 S.E.2d 457 (1943):

. . . (T)he true test as to whether a Court is a county Court or an inferior Court is not one of territory, nor the use of county officers, but whether it has a special and limited jurisdiction. [27 S.E.2d at 460](#).

*3 The Civil and Criminal Court of Spartanburg County is a court of special and limited jurisdiction. It deals only with those matters that come within a statutorily determined range of cases. It may only act in these fields, and does not have the extensive jurisdiction of a circuit court. Furthermore, by its own terms, the court is ‘inferior to the county court and the circuit court.’ Section 15–1671, 1962 Code.

CONCLUSION (Discussion of Question II):

Therefore, the opinion of this Office is that the Civil and Criminal Court of Spartanburg County is one of those ‘county courts or other similar courts with jurisdiction inferior to the circuit court’ within the meaning of Article VII, Section 5 of Act 690 of 1976, and as such it will continue in operation until July 1, 1979, at which time it will be abolished and its jurisdiction devolved upon the unified court system.

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