

1974 WL 28122 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 9, 1974

\*1 Sheriff Frank Powell  
1400 Huger Street  
Columbia, SC 29200

Dear Sheriff Powell:

Mr. McLeod has referred to me your recent letter concerning the refusal of a Spartanburg Magistrate to countersign a warrant issued in Richland County.

I would like to refer you to Section 43-221 of the 1962 Code of Laws of South Carolina which deals with the countersigning of warrants by magistrates. This Section states in part;

A magistrate may endorse a warrant issued by a magistrate of another county when the person charged with a crime in such warrant resides in or is in the county of the endorsing magistrate. When a warrant is presented to a magistrate for endorsement as herein provided, the magistrate shall authorize the person presenting it or any special constable to execute it within his county.

This paragraph gives to a magistrate jurisdiction to countersign a warrant issued in another county when the person charged resides in or is physically located in the county of the countersigning magistrate. It further provides that when a warrant is presented under these circumstances, the magistrate shall authorize its execution. The use of the word shall in statutory context of this type carries a mandatory meaning. (See Black's Law Dictionary, 4th Ed. Rev. 1970, SHALL, p. 1541.) It, therefore, seems that the countersigning of a properly issued warrant is mandated to the magistrate with jurisdiction to do so. It goes without saying that to permit a countersigning magistrate to require the same showing of probable cause as required by the issuing magistrate would place a double and unreasonable burden on those persons charged with enforcing the law.

It is equally important to note that the last sentence of paragraph two of the cited statute states:

(P)rovided, however, that a magistrate shall not be required to endorse any such warrant when the maximum penalty for each offense charged by such warrant does not exceed ten dollars or when the offense consists of the illegal parking of a motor vehicle. (Emphasis added.)

The above cited statutory language makes it clear that in all but the excepted cases, a magistrate is required to countersign a warrant issued by a magistrate in another jurisdiction.

Thank you very much for bringing this matter to our attention. Since this office has not been able to ascertain the particular magistrate involved, a copy of this letter will be mailed this date to all magistrates in Spartanburg County.

With kindest personal regards,

Hutson S. Davis, Jr.  
Assistant Attorney General

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