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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

May 23, 2002

The Honorable D. B. Owens  
Florence Municipal Judge  
City-County Complex DD  
180 N. Irby Street  
Florence, South Carolina 29501-3148

**Re: Your Letter of May 10, 2002  
S.C. Code Ann. §22-5-910**

Dear Judge Owens:

In your above-referenced letter, you indicate that you would like this Office's "... analysis of the correct interpretation of S.C. 22-5-910 Expungement of Criminal Records ..." Your request for analysis is focused on the following language of Section 22-5-910:

Following a first offense conviction in a magistrate's court or a municipal court, the defendant after three years from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. ... If the defendant has had no other conviction during the three-year period following the first offense ... (emphasis yours).

By way of background you indicate that "[w]e [your court] have had a number of cases where an individual doesn't apply to have a first offense expunged until sometime after they got a second offense although the second offense was committed more than three years after the first offense." Given this background and the language of Section 22-5-910, you ask "would [such an individual] still be eligible to have that first offense expunged?"

The cardinal rule of statutory construction is that a court is to ascertain and effectuate the actual intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 372 S.E.2d 569 (1989). In construing a statute, its words must be given their plain and ordinary meaning without resort to a subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right either to look for or impose another meaning.

*Request Letter*

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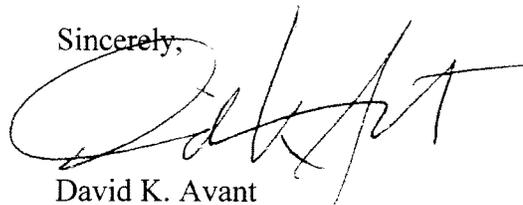
Chestnut v. South Carolina Farm Bureau Mut. Ins. Co., 298 S.C. 151, 378 S.E.2d 613 (Ct.App.1989).

Section 22-5-910 provides that “[i]f the defendant has had no other conviction during the three-year period following the first offense conviction in a magistrate’s court or a municipal court, the circuit court may issue an order expunging the records.” The statute is silent as to the effect of a subsequent conviction after the three-year waiting period has elapsed. Applying the literal language of Section 22-5-910 to the scenario presented in your letter, it would appear that the individual would be eligible to petition the court for expungement of his or her records. While this actual scenario may not have been contemplated by the General Assembly in passing Section 22-5-910, it is my opinion that to find otherwise would result in a forced limitation of the statute not included in its plain language.

An individual’s eligibility under Section 22-5-910 for expungement of his or her records, however, does not necessarily mean that such expungement is mandatory. When Section 22-5-910 was initially enacted by the General Assembly in 1992, the language of the statute provided that “[i]f the defendant has had no other conviction during the one-year period following the first offense conviction in a magistrate’s court or a municipal court, the circuit court shall issue an order expunging the records.” (See 1992 Acts and Joint Resolutions Act No. 395 §1) (Emphasis added). In 1997, Section 22-5-910 was amended to its present form which provides that “... the circuit court may issue an order expunging the records.”(emphasis added). The title to Act No. 37 of 1997, the Act which amended Section 22-5-910 as discussed, provides insight into the General Assembly’s intent in the amendment. That title states in pertinent part that the Act’s purpose is “... to amend Section 22-5-910 ... so as to ... change from mandatory to optional the requirement that the circuit court issue an order expunging the record ... .” Accordingly, even though an individual may be eligible for expungement under Section 22-5-910, the court may, in its discretion, refuse to order such. It is my opinion that a court may consider a conviction which has occurred after the three-year waiting period in determining whether an individual should have his records expunged pursuant to Section 22-5-910.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General

DKA/an