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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

December 28, 1999

The Honorable Donna B. Owens
Florence Municipal Judge
City-County Complex DD
180 N. Irby Street
Florence, South Carolina 29501-3456

Dear Judge Owens,

In your letter of October 25, 1999, to this Office you ask for clarification of South Carolina Code Ann. Section 22-5-910, which allows for the expungement of records for first offenses in a municipal court. Specifically, you ask for an interpretation of the portion of the statute which says that "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." You write that your court was presented with a defendant seeking an expungement who had pled guilty in a single court appearance in 1988 to three charges: Simple Possession of Marijuana, Minor in Possession of Beer, and Littering. The defendant had no further convictions. You ask whether the three convictions are considered separate offenses or, because of the single court appearance, collectively a first offense.

As you correctly noted, this Office has previously concluded that in an order for expungement of fraudulent check charges, that each check is considered a separate offense, even if all are disposed of in a single court appearance. See Op. Atty. Gen. April 9, 1990. Multiple fraudulent check charges, therefore, preclude the availability of an expungement. In that opinion, it was noted:

For these multiple charges, one disposition or sentence may be provided. In such circumstances it may be necessary to examine court records, such as the indictment itself if the case was brought in general sessions court, to determine if expungement is proper under Section 34-11-90. Consistent with our interpretation as expressed above, expungement would be proper only if the conviction was based upon one offense (one fraudulent check). If there were at one time multiple charges, expungement would be proper only if the other charges were nolle prossed.

Request Letter

Although Section 22-5-910 does not expressly state that each charge is a separate offense if a defendant is charged with multiple offenses in a single court appearance, it is the opinion of this Office, and consistent with previous opinions of the Office, that the phrase "first offense conviction" refers only to one specific charge. Thus, a person with multiple convictions from a single court appearance could not have his record expunged under Section 22-5-910.

Ultimately, however, this question is for the circuit courts of South Carolina to decide. As noted in the statute, the circuit courts are given exclusive jurisdiction to order expungement. Thus, although it is the opinion of this Office that multiple convictions in a single court appearance would constitute separate offenses, only the circuit court can resolve the issue decisively.

This letter is an informal opinion only. It has been written by a designated Senior 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 not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General