

The State of South Carolina

Opinion. No 88-4
P 27

Office of the Attorney General

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January 14, 1988

The Honorable Retha C. Cobb
Municipal Judge, City of Seneca
Seneca Police Department
Drawer 4773
Seneca, South Carolina 29679

Dear Judge Cobb:

In a letter to this Office you indicated that by ordinance the City of Seneca adopted the provisions of this State's laws dealing with the offense of issuing a fraudulent check, Sections 34-11-60 et seq. of the Code, thereby making such offense a municipal offense of the City of Seneca. As a result, the municipal court is authorized to try such cases. You have questioned whether a case involving the offense of issuing a fraudulent check tried in your court should be considered a first or a subsequent offense if the individual issuing the check has a record of convictions for such offense in courts other than your municipal court.

The provisions of Section 34-11-90 of the Code which provide the penalties for the offense of issuing a fraudulent check makes reference to a "conviction" for such offense. For instance, pursuant to Sections 34-11-90 (a) the penalties for convictions in a magistrate's or municipal court are increased for second and subsequent convictions. Pursuant to subsection (c), after a first offense conviction, a court is authorized to suspend a sentence upon the payment of restitution and court costs. Additionally, pursuant to subsection (e)

...(i)f the defendant has had no other conviction during the one-year period following the conviction under this section, the court shall issue an order expunging the records. No person shall have any rights under this section more than one time. As used in this section the term "conviction" shall include

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the entering of a guilty plea, the entering of a plea of nolo contendere, or the forfeiting of bail.

Also pursuant to Section 34-11-95 of the Code, a conviction of a first offense or second offense of issuing a fraudulent check shall be reported to SLED which keeps a record of such conviction.

In the opinion of this Office, it appears that any fraudulent check conviction in any court in this State pursuant to the provisions of Sections 34-11-60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. As to the situation referenced by you, an individual charged with such offense in a case before you should be charged with a second offense if he has a prior conviction for issuing a fraudulent check in a case tried by a magistrate in your county.

You also questioned what authority a chief magistrate has in cases within the jurisdiction of the municipal judge. I would refer you to a memorandum issued by the State Court Administration Office. The memorandum, which is printed on Page VIII-37 of the Bench Book for Magistrates and Municipal Court Judges states:

...the court in which the action is initiated (e.g. court issuing arrest warrant) shall perform all necessary judicial functions regarding the case (e.g. conducting trial or holding preliminary examination)...The one exception to the general rule requiring all judicial functions be performed by the court initiating the action is the setting of bail...(However)...to avoid the obvious potential for conflict, such setting of bail should be performed only upon the request of the initiating court and with careful coordination between the two courts. This procedure for conducting bail proceedings is not intended to be used on a regular basis, but only in those instances in which a judge of the initiating court is unavoidably unavailable and unreasonable delay in presenting defendants to a judicial officer will result.

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See also: Bench Book at pp. VIII-121 and VII-5.

If you are in need of further clarification of the authority of a chief magistrate as to municipal court cases, you may wish to contact the State Court Administration Office.

With best wishes, I am

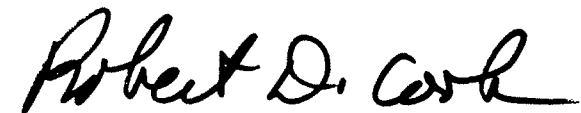
Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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