

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-3970

October 25, 1985

S. Jeff Boyd, Jr., Staff Attorney  
South Carolina Court Administration  
Post Office Box 50447  
Columbia, South Carolina 29250

Dear Jeff:

In a letter to this Office reference was made to various state statutes, namely, Sections 17-1-40, 34-11-90 (e), and 44-53-450 (b) of the Code, which provide for the expungement or destruction of certain criminal records upon particular circumstances. You have asked what records maintained by magistrates and municipal court judges are subject to the orders of expungement or destruction when such orders are issued pursuant to one of the referenced statutory provisions. As to such orders, this Office has consistently held that a magistrate is without authority to order the expungement of records of a criminal defendant. See: Opinions dated September 7, 1979; February 26, 1979; March 8, 1979; September 24, 1981. The February 26, 1979 opinion particularly stated:

"... a person seeking expungement of criminal record information must apply to the circuit court with jurisdiction over the charge in question to obtain the order of expungement. The application should be served upon the circuit solicitor and the solicitor may consent to the order, if appropriate, or the order may be rendered without such consent if the solicitor has been served and given an opportunity to appear on behalf of the State."

As noted by such opinion, expungements of criminal record information can only be accomplished pursuant to the specific orders of the circuit court with notice to the solicitor.

REQUEST LETTER

Mr. Boyd  
Page 2  
October 25, 1985

As to any expungements ordered pursuant to Section 17-1-40, this Office in a prior opinion dated September 18, 1980 determined that such provision is inapplicable to any records maintained by a magistrate's court. This Office referenced that pursuant to such provision, after a discharge or dismissal of a criminal charge or a finding of innocence, no record relevant to such charge "... shall be retained by any municipal, county or State law-enforcement agency." The opinion concluded that such provision should not be construed to include a magistrate's court. Consistent with such opinion, any expungements ordered pursuant to Section 17-1-40 would also not be applicable to a municipal court.

Pursuant to Section 34-11-90 (e), after one year from the date of a first offense conviction under the fraudulent check act, the defendant may

"... apply to the court for an order expunging the records of his arrest and conviction.  
... If 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."

Inasmuch as such provision on its face is broad in its command that the records of the arrest and conviction of a fraudulent check defendant be expunged, it appears that such provision would similarly be applicable to any such records maintained by a magistrate's court or municipal court.

Section 44-53-450 of the Code provides for the discharge and dismissal of the charges against an individual who pleads guilty or is found guilty of possessing certain controlled substances upon the fulfillment of specified terms and conditions. Subsection (b) states

"(u)pon the dismissal of such person and discharge of the proceedings against him ..., such person ... may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained ... by SLED) ... all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section.

Mr. Boyd  
Page 3  
October 25, 1985

Consistent with the conclusion as to Section 34-11-90, it appears that records maintained by a magistrate's court or a municipal court would be destroyed as required by Section 44-53-450.

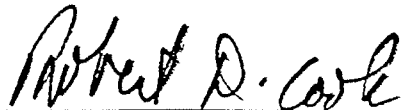
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



---

ROBERT D. COOK  
Executive Assistant for Opinions