

1981 WL 158183 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 1981

*1 Honorable Barry W. Knobel
City Recorder
P. O. Box 1046
Anderson, SC 29622

Dear Judge Knobel:

In a letter to this office you questioned whether a provision of Act No. 480 of 1980, codified as [Section 14-25-65, Code of Laws of South Carolina](#), 1976, as amended, should be construed as altering the sentencing authority of a municipal judge as to individuals found guilty of certain offenses for which a specific penalty is provided. The provision states:

‘(w)henever the municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of such court, he may impose a fine or imprisonment, or both, not to exceed two hundred dollars or thirty days.’

In your request letter, you referenced that pursuant to [Section 56-5-2940, Code of Laws of South Carolina](#), 1976, the penalty for driving under the influence, first offense, is a fine of not more than one hundred (\$100.00) dollars or imprisonment for not more than thirty days. Referencing [Section 14-25-65](#), you have questioned whether you may increase the penalty for an individual found guilty of first offense DUI or are you bound by the specific penalty provided by [Section 56-5-2940](#).

In the opinion of this Office, as municipal judge, you may only impose such penalties as are specifically provided for the violation of a particular criminal statute. [Section 14-25-65](#), *supra*, should not be construed as altering the sentencing authority of a municipal judge so as to permit sentences to be imposed that vary from that specifically provided for the violation of a particular municipal ordinance or State statute. It is generally provided that:

‘(t)he powers of courts with reference to the punishment of criminals are derived from statute, and as a general rule, where the punishment for an offense is fixed by statute, that imposed in the sentence must conform thereto . . .’ 24B C.J.S., Criminal Law, Section 1982(a), p. 567.

Therefore, as to your example of the possible sentence for an individual convicted of driving under the influence, first offense, as municipal judge, you should sentence according to the provisions of [Section 56-5-2940](#), *supra*.

Instead of interpreting [Section 14-25-65](#), *supra*, as altering the sentencing authority of a municipal judge, a more proper construction would appear to be that such provision provides the maximum sentencing authority of a municipal judge. Such provision should be read in association with [Section 14-25-45, Code of Laws of South Carolina](#), 1976, as amended, which provides that:

‘(e)ach municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties, and jurisdiction in criminal cases made under state law and conferred upon magistrates . . .’

Pursuant to [Section 5-7-30, Code of Laws of South Carolina](#), as amended, municipalities are authorized to enact ordinances and establish fines and penalties for the violation of such ordinances not exceeding two hundred dollars or thirty days imprisonment. [Section 22-3-550, Code of Laws of South Carolina](#), 1976, as amended, provides that magistrates have jurisdiction of all offenses

subject to fines of two hundred dollars or imprisonment for thirty days. Therefore, the criminal jurisdiction of municipal courts is limited to cases where the penalty does not exceed two hundred dollars or thirty days.

*2 In a separate question you asked whether you could require a two hundred dollar (\$200.00) bond of individuals arrested for violating offenses for which the maximum fine is one hundred (\$100.00) dollars. In our telephone conversation, you indicated you were referencing a cash bond and not a recognizance bond. [Section 22-5-530, Code of Laws of South Carolina](#), 1976, provides that:

‘(a)ll persons charged and to be tried before any magistrate for any violation of law shall be entitled to deposit with the magistrate, in lieu of entering into recognizance, a sum of money not to exceed the maximum fine in the case for which such person is to be tried.’

Inasmuch as pursuant to [Section 14-25-45](#), supra, municipal judges have the same powers, duties, and jurisdiction in criminal cases as magistrates, the provisions of Section 22-5-320 would be applicable to cash bonds collected by municipal judges. Therefore, as to such cash bonds, you would not be authorized to require a bond greater than the maximum fine which may be imposed.

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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