

1981 WL 157981 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 24, 1981

*1 The Honorable William E. McLeod
Magistrate
Florence County
City-County Complex
Florence, South Carolina 29501

Dear Magistrate McLeod:

In a letter to this office you questioned whether, as Magistrate, you could order the expungement of the records maintained by SLED of an individual convicted of first offense simple possession of marijuana. As you are aware, such offense is, pursuant to recent legislation bearing ratification number R65, now within the jurisdiction of the Magistrate's Court. Also included in such legislation is the provision that:

'conditional discharge may be granted in accordance with the provisions of § 44-53-450 upon approval by the circuit solicitor to the magistrate or municipal judge.'

[Section 44-53-450\(a\), Code of Laws of South Carolina](#), 1976, outlines the procedure for granting a conditional discharge to an individual who pleads guilty or is found guilty of particular first offense drug violations. [Section 44-53-450\(b\)](#) states further that: 'upon the dismissal of such person and discharge of the proceedings against him under subsection (a) . . . such person . . . may apply to the Court for an order to expunge . . . (certain) . . . official records . . .'

An earlier opinion of this office dated February 26, 1979 stated in part that:

'a person seeking expungement of applicable records of the South Carolina Law Enforcement Division must apply to the Circuit Court of jurisdiction, with proper notice to the Circuit Solicitor, for an Order of Expungement, which must then be served upon SLED . . . A Magistrate's Court . . . may not order . . . (SLED) . . . to expunge criminal record information.'

The opinion referenced that such determination was based upon the fact that an attempt by a Magistrate's Court to take action to expunge records maintained by SLED ' . . . would amount to an unlawful extension of those Courts beyond their territorial limits.'

An opinion issued by this office dated March 8, 1979 further stated that:

' . . . inasmuch as a Magistrate's Court is not a Court of record and is a Court of limited jurisdiction, a Magistrate is without authority to order the destruction of criminal records maintained by any authority, county or municipal, in such instances . . . Even if a Magistrate could order certain records expunged, it is apparant that the inability of a Magistrate to order the destruction of criminal record information maintained by the South Carolina Law Enforcement Division . . . (as noted in the earlier opinion) . . . would create potential problems and confusion for a person seeking expungement of his records. Therefore, in the opinion of this office, for purposes of the expungement of criminal record information of an individual . . . the individual should apply to the Circuit Court to obtain an Order of Expungement in the manner detailed in the referenced opinion of February 26, 1979.

While the referenced legislation enacted this year does authorize a conditional discharge for a first offense simple possession conviction in accordance with § 44-53-450, no provisions were included which may be interpreted as authorizing a Magistrate's Court to order the expungement of any criminal records maintained by SLED. Therefore, the rationale and findings of the previously referenced opinions of this office are still applicable with the result still being that Magistrates are without authority to order the expungement of records maintained by SLED.

*2 With best wishes,
Sincerely,

Charles H. Richardson
Assistant Attorney General

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