

1981 WL 158097 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1981

*1 Ms. Elaine F. McLeese
Office of Senator Phil Leventis
Post Office Box 142
Columbia, South Carolina 29202

Dear Ms. McLeese:

In a letter received by this office on September 21, 1981, you raised the following questions:

1. Must cases involving offense which are committed inside the city limits be tried in front of a city judge or can they be heard by a county magistrate?
2. When city cases are tried before the county magistrate, is the city entitled to receive some portion or all of the fines imposed in such cases?
3. Who receives the fines on cases that are tried in General Sessions Court on crimes that are committed inside the city limits?
4. The town of Pinewood currently has a city magistrate in the person of its mayor. Would this be considered dual office-holding?

You referenced that your questions concerned traffic offenses and disorderly conduct charges.

As to your first question, [§ 14-25-5\(c\), Code of Laws of South Carolina](#), 1976, as amended, provides that:

'any municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situated upon approval by the governing body of the county.'

Therefore, pursuant to such statutory provision, a magistrate may hear and determine municipal cases. As to a municipal court's jurisdiction, [§ 14-25-45, Code of Laws of South Carolina](#), 1976, as amended, provides:

'Each 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. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.'

As to your question concerning whether a municipality is entitled to receive a portion or all of the fine generated by a municipal case tried by a county magistrate, I am enclosing a copy of a previous opinion of this office dated October 2, 1980 and a copy of recent legislation bearing ratification number R238 which authorizes a municipality by contract to receive a portion of the fines collected as a result of a city case tried before a county magistrate. Of course, as specified, such arrangement must be pursuant to a contract between the county and municipality.

Concerning your third question as to who receives fines collected as penalties for cases committed inside the city limits but which are triable in the General Sessions Court, [§ 14-21-490, Code of Laws of South Carolina](#), 1976, as amended, provides that:

'Except for those drug fines and forfeitures remitted to the Department of Mental Health as provided in § 44-53-580, and except for those fines and forfeitures for game or fish law violations used for the purposes enumerated in §§ 50-1-150 and 50-1-170 of the 1976 Code, on July 1, 1977, three-fourths of all costs, fees, fines, penalties, forfeitures and other revenues generated by the circuit courts and the family courts established by this act shall be paid over to the county in which the proceeding is instituted and one-fourth of such revenues shall be remitted to the State for use in deferring the costs of the unified court system. The provisions of this section shall specifically not apply to any fine, penalty, forfeiture or other revenue generated in the magistrate's or municipal courts of this State.' (Emphasis added)

*2 I am unaware of any statutory exception as to fines generated by municipal cases triable in the General Sessions Court.

As to your remaining question concerning whether, in light of the constitutional prohibition against dual office-holding, a mayor may hold the additional office of city magistrate, which I assume to be that of a municipal recorder, this office in an opinion dated July 6, 1981, and which referenced previous opinions of this office, stated again that the position of municipal recorder is a public office within the meaning of [Article XVII, § 1A of the South Carolina Constitution](#). Such constitutional provision states that ' . . . no person shall hold two offices of honor or profit at the same time.' (Also see Article VI, § 3.) The referenced constitutional provisions are contravened when a person concurrently holds two offices of honor and profit at the same time. This office has, in several previous opinions, also determined that the office of mayor is an office for dual office-holding considerations. (See Ops. dated July 24, 1980, September 14, 1977, December 16, 1977.) Therefore, referencing the above, an individual serving as mayor may not also hold the position of municipal recorder inasmuch as to do so would constitute dual office-holding.

With best wishes,

Sincerely,

Charles H. Richardson
Assistant Attorney General

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