

1979 WL 42806 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 12, 1979

***1 To: Neal Forney, Assistant Director**

SUBJECT: Appeal and Error, Municipal Courts, Mayors

(1) The trial of an appeal from the decision of a mayor, an attendant or a mayor pro-tempore to a city or town council is de novo.

(2) An appeal from a municipal recorder of a municipal court established pursuant to [Section 14-25-910 of the 1976 Code](#) of Laws to a city council is not heard de novo.

South Carolina Court Administration

QUESTION:

Is the trial by the city council of an appeal from a decision of the mayor, attendant, mayor pro-tempore, or recorder de novo?

AUTHORITIES:

[Sections 14-25-110, 14-25-130, 14-25-140, 14-25-20, 14-25-60, 14-25-1000, 14-25-1010, Code of Laws of South Carolina, 1976; City Council of Anderson v. O'Connell, 25 S.C. 355, 7 S.E. 523 \(1888\).](#)

DISCUSSION:

Pursuant to [Section 14-25-110 of the 1976 Code](#) of Laws, all decisions of a mayor, attendant or mayor pro-tempore may be appealed to a city or town council provided notice is given within five days after sentencing. [Section 14-25-130 of the 1976 Code](#) of Laws provides that as to such appears:

(a) the trial of such appeal the mayor, attendant or mayor pro-tempore shall preside and the aldermen shall sit as a court. A concurrence of a majority of the aldermen present shall be necessary for the reversal of the judgment of the mayor, attendant or mayor pro-tempore but if the aldermen present shall divide equally in opinion the judgment of the mayor, attendant or mayor pro-tempore shall be affirmed. The aldermen may reverse, modify or confirm any or all rulings or conclusions of the mayor, attendant or mayor pro tempore made or reached in the first trial of the case.

It is further provided by [Section 14-25-140 of the 1976 Code](#) of Laws that:

(s)uch city or town councils, upon any such appeal, shall have the same powers conferred upon attendants or mayors by [§§ 14-25-20](#) and [14-25-60](#).

[Section 14-25-20](#) provides that mayors and intendants have the power of a magistrate to compel the attendance of witnesses and require them to give evidence. Therefore, it would seem to be implied that by granting such power to compel witnesses it was intended that the 'trial of an appeal' by a city or town council referenced by [Section 14-25-130](#) be de novo.

In [City Council of Anderson v. O'Donnell](#), 29 S.C. 355, 7 S.E. 523 (1888), the South Carolina Supreme Court in construing a provision of the charter of the City of Anderson held that such provision which allowed an appeal from a decision of a mayor to the city council mandated an appeal do novo. The charter stated that an appeal could be had provided that the defendant gave proper notice and security 'to appear and defend' before the city council. It was specifically provided that:

In all cases appealed to the city council the mayor shall preside, or some alderman as hereinbefore provided, and the aldermen shall sit as a jury to try the facts involved, and may also reverse, modify, or affirm any or all of the rulings of the mayor in the first trial of the case.

*2 The Court noted that the provision that the alderman 'sit as a jury' implied that witnesses may be sworn and examined as in other jury trials. Therefore, in the opinion of the Court, it was implied that appeals heard by the aldermen sitting as a jury would be de novo. A similar argument may be made as to that portion of [Section 14-25-130](#) which states that '(a)t the trial of such appeal the mayor, attendant or mayor pro-tempore shall preside and the aldermen shall sit as a court.' (emphasis added) Thus de novo appeal is indicated especially when it is noted, as earlier referenced, that the attendance of witnesses and the giving of evidence may be required.

The Court also stated that the language in the Anderson charter which referred to the trial of the mayor as 'the first trial of the case' indicated that a second trial by the council, and not a mere appeal in the usual sense was contemplated. It should be noted that [Section 14-25-130](#) also references that the aldermen may reverse, modify or confirm rulings or conclusions made 'in the first trial of the case.'

It was also referenced by the Supreme Court in [O'Donnell](#) that an appeal to the city council in Anderson could be made provided proper notice and security is given 'to appear and defend' before the council. The Court noted that the condition of the bond was . . . not to appear and prosecute his appeal, which would be the most appropriate language, if the intention was to give him a mere right of appeal, but the language is, 'to appear and defend,' just such language as would be appropriate to a re-trial, or a second trial of the case. [29 S.C. at 365](#).

Similarly, [Section 14-25-110](#) permits appeals provided notice is given and the defendant has entered into a bond to 'appear and defend' before the council.

Therefore, based upon the above, it is the opinion of this Office that an appeal from the decision of a mayor, attendant, or mayor pro-tempore to a city or town council referenced in [section 14-25-110](#) contemplates a de novo proceeding before a city or town council.

As you indicated, [Section 14-25-1000 of the 1976 Code](#) if Laws permits appeal from the sentence or judgment of a municipal recorder in a court in a municipality of not less than one thousand in population to the city council or the court of general sessions of the county where the trial is held. A review of [Section 14-25-1010 of the 1976 Code](#) of Laws indicates in part that (i)n the event of an appeal the recorder shall make a return to the tribunal to which the appeal is taken and the appeal shall be heard by the city council or presiding judge, as the case may be, upon such return.

It is further indicated that the return consists of a written report of the charges preferred, the testimony, and the proceedings and sentence of judgment. In the opinion of this Office, inasmuch as the provisions governing such appeals do not indicate a de novo appeal before the city council, an appeal from a sentence or judgment of a municipal recorder heard by a city council would not be a de novo proceeding, but instead should be heard on the return provided.

CONCLUSION:

*3 1. The trial of an appeal from the decision of a mayor, an attendant, or a mayor pro-tempore to a city or town council referenced in [Section 14-25-130](#) is de novo.

2. An appeal from a municipal recorder of a municipal court established pursuant to [Section 14-25-910](#) to a city council is heard by the council on the return made by the recorder and therefore such a hearing is not a de novo proceeding.

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