

1980 WL 120881 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 18, 1980

***1 RE: Expungement of Records**

David W. Goldman, Esquire
Attorney at Law
17 E. Calhoun Street
P. O. Box 2038
Sumter, SC 29150

Dear Mr. Goldman:

In a letter to Mr. Sloan of this Office, you questioned whether [Section 17-1-40, Code of Laws of South Carolina, 1976](#), which provides for the expungement of certain criminal records, applies to the criminal docket book maintained by a magistrate pursuant to [Section 22-1-80, Code of Laws of South Carolina, 1976](#), as to an instance where an individual, charged with driving under the influence, has been found not guilty.

As you are aware, [Section 17-1-40, supra.](#), states:

‘Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge, the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county, or State law-enforcement agency. (Emphasis added).

In the opinion of this Office, such Section does not mandate that any notations made by a magistrate in a criminal docket book maintained pursuant to [Section 22-1-80](#) should be deleted. As referenced, [Section 17-1-40, supra.](#), applies to records retained by municipal, county, or State law-enforcement agencies. No further provision is made for records maintained by a magistrate and in the opinion of this Office, the above referenced provision should not be construed to include magistrates' offices.

If there are any questions concerning the above, please do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Attorney General

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