

1979 S.C. Op. Atty. Gen. 154 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-108, 1979 WL 29112

Office of the Attorney General

State of South Carolina

Opinion No. 79-108

September 7, 1979

***1 SUBJECT: Magistrates, Bad Checks.**

A magistrate is without authority to order the expungement of the record of arrest and conviction of a defendant convicted of violating the fraudulent check act.

TO: Honorable Edwin A. Manos
Abbeville County Magistrate

QUESTION:

Does a magistrate have jurisdiction to order to expungement of the arrest and conviction records of a defendant convicted of violating the fraudulent check act?

AUTHORITIES:

[Sections 34–11–60 et seq., Code of Laws of South Carolina](#), 1976, as amended; Op. Att'y Gen., February 26, 1979; Op. Att'y Gen., March 8, 1979.

DISCUSSION:

In a letter to this Office you made reference to [Section 34–11–90\(e\), Code of Laws of South Carolina](#), 1976, as amended, and asked specifically whether pursuant to such section, a magistrate's court has jurisdiction to order the expungement of the arrest and conviction records of a defendant convicted of violating [Section 34–11–60, Code of Laws of South Carolina](#), 1976, as amended, the fraudulent check act. Such section states in part:

‘(a)fter a conviction under this section on a first offense, the defendant may, after one year from the date of the conviction, apply, or cause someone acting on his behalf, to apply to the court for an order expunging the records of the arrest and conviction. If the defendant has had no other conviction during the one year period following the conviction under this section, the court shall issue an order expunging the records.’ [Section 34–11–90\(e\), Code of Laws of South Carolina](#), 1976, as amended.

This Office has previously stated that a person seeking expungement of criminal record information pursuant to [Section 17–1–40, Code of Laws of South Carolina](#), 1976, a statute granting expungement authority generally:

‘(m)ust apply to the Circuit Court with jurisdiction over the charge in question to obtain the Order of Expungement. The application should be served upon the Circuit Solicitor and the Solicitor may consent to the Order, if appropriate, or the Order may be rendered without such consent if the Solicitor has been served and given an opportunity to appear on behalf of the State. The Order must then be served upon SLED.

A Magistrate Court or Municipal Court does not have authority to take action for expungement against the South Carolina Law Enforcement Division, an agency of the State government performing a statewide function inasmuch as

such action would amount to an unlawful extension of those Courts beyond their territorial limits.' Op. Att'y Gen., February 26, 1979. See also Op. Att'y Gen., March 8, 1979.

The matter of expungement of records maintained by SLED is especially relevant inasmuch as by Section 34-11-95, all first and second offense convictions of [Section 34-11-60](#), supra., are reported to SLED which thereafter maintains a record of the convictions.

With reference to the above opinions, it is the opinion of this Office that a person convicted of violating the fraudulent check act seeking expungement of the record of arrest and conviction should apply to the circuit court in the manner prescribed by the above opinion. By doing so, the records maintained by the South Carolina Law Enforcement Division could be ordered destroyed as well as those records maintained by any county officials.

CONCLUSION:

***2** A magistrate is without authority to order the expungement of the arrest and conviction records of a defendant convicted of violating the fraudulent check act. Such expungement should be carried out only by order of a circuit court as referenced in the February 26, 1979 opinion of this Office.

Charles H. Richardson
Assistant Attorney General

1979 S.C. Op. Atty. Gen. 154 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-108, 1979 WL 29112