

1978 WL 34943 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 16, 1978

**\*1 Re: City of Charleston v. Dempsey**

Lieutenant Carl B. Stokes  
S. C. Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221

Dear Lieutenant Stokes:

This is in response to the request from the State Law Enforcement Division (SLED) concerning the validity of an expungment order issued by a Municipal Court judge in an action in which neither the State nor SLED was a named party. It is the opinion of this Office that such an order is not binding upon SLED.

There are two statutory provisions in the Code of Laws of South Carolina (1976) which allow for the expungment of arrest and conviction records and they are operative only in very limited situations. The first provision, § 17-1-40, mandates that '[a]ny 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.' This section is obviously inapposite to the case at hand, as Mr. Dempsey was in fact convicted of both offenses with which he was charged.

The second provision, § 44-53-450, allows for a 'conditional discharge' in the case of certain first offenses for drug possession, and further provides for the expungment of all official public records relating to the conviction if the accused 'was not over twenty-five years of age at the time of the offense' and conforms with certain enumerated conditions. This section is also not applicable to the present situation, as it pertains solely to convictions under [§ 44-53-370\(c\) or \(d\) of the Code](#), as opposed to convictions under city ordinances, and involves procedural requirements, such as the probation and reappearance of the accused, which were not observed here. Furthermore, the 'Conditional Discharge' statute specifically provides that 'a nonpublic record shall be forwarded to and retained by [SLED's] Department of Narcotic and Dangerous Drugs . . . solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this article.' Of course, § 44-53-450 cannot even arguably be applied to Mr. Dempsey's destruction of property conviction.

Even assuming arguendo that the Municipal Court did have the authority to expunge its own records, the Court could not order and enforce similar action on the part of SLED. As a court of limited jurisdiction, such action by the Municipal Court against an agency of the state government performing a statewide function would amount to an unlawful extension of its jurisdiction beyond its territorial limits. See e.g., [Martin v. Ellisor](#), 264 S.C. 202, 213 S.E.2d 732 (1975), and Section 15-1581.1, CODE OF LAWS OF SOUTH CAROLINA (1962).

Kindest personal regards,

**\*2** C. Tolbert Goolsby, Jr.  
Deputy Attorney General

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