

1975 WL 29705 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 14, 1975

\*1 Mayor W. P. Cooksey  
Town of Blacksburg  
Blacksburg, South Carolina

Dear Mayor Cooksey:

This is in response to our recent conversation in which you posed several questions pertaining to the administration of the municipal court of Blacksburg. If I may paraphrase, I will answer your questions in the order posed.

1. Can the city charge a fee (court costs) for dropping a warrant previously issued?

The provisions of Section 15-1010, 1962 Code of Laws, allow municipal courts to exercise all the powers, duties, and functions of magistrate's courts. This has been held to mean that the courts are vested with the same powers as a magistrate's court in that particular county to try and determine violations of city ordinances. [Keels v. City of Sumter](#), 95 S.C. 203, 78 S.E. 893 (1913). This being the case, it would seem that the municipal courts are governed by the rules of fee assessing applicable to magistrates.

Title 27 deals with fees and costs chargeable by public officers on the county level. Chapter 5, Article 3 deals particularly with magistrates. Section 27-429 (1962 Code of Laws) of that chapter reads in pertinent part:

It shall be unlawful for any salaried magistrate in this state to receive any compensation for his services in criminal cases other than his salary or to receive for his own use any portion of his constable's fees or salary in any criminal cases whatsoever, whether such cases are actually tried, compromised or transferred for investigation to the court of general sessions. \* \* \*

In addition, the statute makes it a misdemeanor for any magistrate to violate the statute's proscriptions.

Applying the rationale of the [Keels](#) case it would seem that the provisions of Section 27-429 would apply and the municipal recorder would be without the authority to charge any fee for dropping a warrant. This fee would be in addition to his regular salary and illegal under the statute.

In any event if such a fee schedule is to be imposed it would have to be pursuant to a valid statutory grant of authority. Research indicates no such statutory authority.

2. What fees can a municipality charge a criminal defendant?

Section 15-910, 1962 Code of Laws, puts the financial burden of housing prisoners upon the city. With direct reference to persons arrested by municipal authorities it states in part:

If the offender be committed to jail it shall be done at the expense of the city or town.

The case of [City of Greenville v. Pridmore](#), 162 S.C. 52, 160 S.E. 144 (1931) specifically states that the municipality is required to pay the expense of dieting and housing prisoners on the municipal chain gang.

The imposition of costs against a criminal defendant found guilty is subject to direct statutory provision therefor, as such costs were unknown at common law. [United States v. Gaines](#), 131 U.S. 169, 25 L.Ed. 733; 20 Am.Jur.2d [Costs](#) § 100. As there is no statutory authorization for such costs the common law rule must prevail and such costs are not allowed. Section 1-19, 1962 Code of Laws, as amended.

\*2 The above rationale would likewise apply to an innocent defendant. In addition, Mr. Justice Fortas, concurring in the case of [Giaccio v. Pennsylvania](#), 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed.2d 477 (1966), said:

In my opinion, the Due Process Clause of the Fourteenth Amendment does not permit a state to impose a penalty or costs upon a defendant whom the jury has found not guilty of any offense with which he has been charged. (p. 405 of 382 U.S.)

3. Does city recorder have to be a lawyer?

The provisions of 15-1003, 1962 Code of Laws, provide for the appointment of a recorder. There is no requirement that the recorder be a qualified attorney.

4. How can substitute judge be appointed when mayor is unavailable?

This office has previously expressed the opinion that where a municipal recorder's court is established, the recorder has exclusive power and authority as the presiding judicial officer of that court. (1971 Op. A.G. 46, copy enclosed). The mayor may serve only in the temporary absence, sickness or disability of the recorder. Section 15-1005, 1962 Code of Laws.

Where the mayor serves as the judge of the municipal court pursuant to Section 15-901 then the mayor pro tempore or intendent pro tempore may exercise the same powers as the mayor.

5. Can the city administrator also serve as municipal recorder?

Under the authority of [Ward v. Monroeville](#), 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) we would have to conclude that the city administrator would not be able to serve as city recorder. The administrator's executive responsibilities obviously place him in a very close relationship with the city's finances. The collecting of fines necessarily being a great source of revenues it seems apparent that this could too easily create a conflict between duties and become an effective denial of all accused's due process protections.

I hope the foregoing information will be of aid to you.

Very truly yours,

Cameron B. Littlejohn, Jr.  
Law Clerk

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