

1973 S.C. Op. Atty. Gen. 184 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3547, 1973 WL 21971

Office of the Attorney General

State of South Carolina

Opinion No. 3547

June 21, 1973

*1 1. A municipal recorder does not have authority to impose a sentence singly; and must, therefore, impose a sentence in the alternative.

2. A municipal court will have to set up “time payment” schedule for those persons unable to pay the cash fine when it is imposed.

Recorder

City of Sumter

Sumter, South Carolina

You have requested an opinion with regard to the following: (1) Does a recorder have authority to impose a jail sentence for a misdemeanor without offering the alternative of paying a fine? (2) Does Act No. 390, approved May 17, 1973, mean that a municipal court will have to set up a “time payment” schedule for those persons unable to pay the cash fine when it is imposed?

As to the first question, Opinion No. 2634 written by this office February 13, 1969, specifically states that a municipal recorder must impose a sentence in the alternative. See also: CODE OF LAWS OF SOUTH CAROLINA § 15-905 (1962); [Town of Union v. Hampton](#), 83 S.C. 46 (1909). It still the opinion of this office that municipal courts of cities which have a population of one thousand or more are required, in passing sentences upon convicted law violators, to impose sentences with alternative punishments. Thus, in answer to your specific question, a recorder does not have authority to impose a jail sentence for a misdemeanor without offering the alternative to pay a fine.

Regarding the second question, a municipal court is required, in our opinion, to set up a “time payment” schedule for those persons unable to pay a fine when it is imposed. The Act permits “a judge or a magistrate” to establish a schedule for the payment of a fine for persons who are unable to pay immediately upon conviction and sentence. A recorder of a city, in our judgment, is included within the meaning of the term “judge.” A “judge,” of course, is a public officer selected to preside and to administer the law in a court of justice. 48 C.J.S. Judges § 2(a)(e). Thus a municipal court must set up a “time payment” schedule for persons unable to pay the fines imposed by such a court.

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