

1973 S.C. Op. Atty. Gen. 195 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3555, 1973 WL 21012

Office of the Attorney General

State of South Carolina

Opinion No. 3555

June 27, 1973

***1 1. A municipal court may try a defendant in his absence, after proper notice, whether or not the ordinances of the city make specific provision therefor.**

2. A municipal judge may grant a trial after bond forfeiture, even after expiration of five days from the date of forfeiture, if the case has not been ended by trial in absence and satisfaction of the fine by application of the cash bond to its payment.

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You have inquired generally with reference to two procedures as they relate to municipal courts:

I.

IS A MUNICIPAL COURT EMPOWERED TO CONDUCT A TRIAL *IN ABSENTIA*?

The power of any court in this State to try a misdemeanor defendant in his absence after proper notice—usually service of a uniform traffic ticket—is well established by case law, rather than by statute or ordinance. Ref.: [State v. Sessions](#), 225 S. C. 177, 81 S. E. 2d 287; *State v. Dickert* (SC), filed June 5, 1973.

It is the opinion of this Office that a municipal court may try a defendant in his absence, after proper notice, whether or not the ordinances of the city make specific provision therefor.

II.

MAY A TRIAL BE GRANTED IN A TRAFFIC CASE AFTER BOND FORFEITURE?

Although there is some authority for the proposition that a bond forfeiture in a traffic case is tantamount to conviction, since, by custom and practice, most traffic cases are disposed of in this manner, the question has not been answered in this State. With the question in this posture, it is the opinion of this Office that a municipal judge may grant a trial after bond forfeiture, even after expiration of five days from the date of forfeiture—if the case has not been ended by trial in absence and satisfaction of the fine by application of the cash bond to its payment. Ref.: *State v. Dickert* (SC), filed June 5, 1973, on trial *in absentia* and application of cash bond to the satisfaction of the fine.

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