

1973 WL 26867 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1973

***1 RE: Municipal Police Departments and Recorders Courts.**

Robert L. Hawthorne, Jr., Esquire
Attorney at Law
200 E. Pinckney Stree
Abbeville, South Carolina 29620

Dear Mr. Hawthorne:

In accordance with our past correspondence, this office has agreed to respond to the following questions posed by Elliot, Davis and Company, Certified Public Accountants, regarding the operation of municipal police departments and recorders courts:

1. What requirements does the law place upon a municipal police department regarding maintenance of records concerning the acquisition and disposition of confiscated property?

Municipal officers may, within municipal boundaries, enforce all state and local laws. Section 47-232, S. C. Code of Laws, as amended. Property taken into custody by them in the exercise of their duties falls generally into two categories, to wit, mere evidence, and that which is by law contraband. Mere evidence is customarily taken into custody, somehow identified to the case in which it will be used, and then after final disposition of the case; returned to its owner. However, there is no state law prescribing any set method of listing the property taken for use as evidence.

Contraband items, on the other hand, are specifically identified by law and the disposition of contraband is expressly provided for in the law. Such items include certain weapons, gambling devises, liquor, drugs, and vehicles used in crime. Pertinent statutes dealing with confiscated property include Section 4-92, 4-93, 4-109, 4-403, 4-411.1, 4-414, 16-129.7, 16-145 to 146, 16-514, 32-1510.5, 32-1803, and 57-241 to 243, S. C. Code of Laws, as amended. These laws are self-explanatory. Of note is Section 16-146 requiring the mayor of a municipality to list and sell forfeited weapons. As to items wherein no statutory requirement to keep records is imposed, no legal duty exists for municipal police to keep records of items of property taken and disposed of, other than those duties flowing from the general responsibility of handling the public's business in an orderly and efficient manner.

2. When does the law permit partial payment of a fine?

Authority to permit partial payment of a fine rests solely with a court (judge) having current jurisdiction of the offense for which the fine is levied, and who has power to suspend fines. A 'partial payment' is tantamount to a suspension of a portion of the fine and hence in the case of city recorders the recorder's court concerned must be one which has been given express statutory authority to suspend sentences. See S. C. Code §§ 15-1016 to 1016.1 (1962). Without such statutory authority a fine imposed by a court must be paid in full. This is not to say that the court in its sound discretion may not allow the defendant a reasonable period to make payment.

In no case, however, does a police officer have the authority to alter the payment procedures established by the court.

***2 3. What records must by law be kept regarding partial payment of fines?**

There are no express provisions in the Code of Laws of South Carolina regarding keeping records as to fines collected by recorders courts. Magistrates are required to keep and file such records. S. C. Code §§ 43-12, 43-17 (1962). However, whereas recorders courts follow magistrate court procedures insofar as the trial process is concerned, [Elletson v. Dixie Home Stores](#), 231 S. C. 565, 99 S.E.2d 384 (1957), there is no such parallelism regarding administrative matters.

4. Who has the authority to dismiss charges reflected on a traffic ticket?

Section 46-871, S. C. Code of Laws, as amended, provides:

There shall be one uniform traffic ticket used by all law-enforcement officers in the State, counties and municipalities having traffic jurisdiction, the service of which shall vest all traffic courts with jurisdiction to hear and dispose of the charge for which such ticket was issued and served . . .

In the opinion of this office, once a traffic ticket charging an offense is issued to a motorist jurisdiction over the matter vests in the local traffic (recorders/magistrates) court and only such a court of competent jurisdiction may then dismiss the charges. This, of course, assumes the maximum penalties for the offense charged to be within a traffic court's statutory limits. S. C. Code § 46-685 (1962).

5. What records must by law be maintained by a city recorder?

Express statutory requirements regarding records to be maintained by recorders courts are minimal. Section 46-347, S. C. Code of Laws (1962), requires reporting of DUI convictions to the State Highway Department within ten days. But even so, this does not require that a permanent or semi-permanent record be kept by the court. There is, of course, the aforementioned standing duty which rests on all public officers to perform their duties properly and to be good stewards of the public trust placed in them. In questionable cases it is suggested that those municipal officials charged with electing officers, such as police chiefs and recorders, take steps to expressly define administrative procedures which they believe to be desirable.

If this office can be of further assistance, please correspond.

Very truly yours,

John B. Grimball
Assistant Attorney General

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