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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 28, 2002

The Honorable J. Todd Rutherford
Member, House of Representatives
432-A Blatt Building
Columbia, South Carolina 29211

**Re: Your Letter of September 30, 2002
Conditions on Suspended Sentences - Municipal Court**

Dear Representative Rutherford:

In your above-referenced letter, you request "... the opinion of the SC Attorney General on the maximum time limitation that a municipal court judge can impose conditions on suspended sentences." By way of background, you indicate that you are "... aware that pursuant to SC Code Ann. §§14-25-75 and 22-3-800 magistrates and municipal judges have the authority to suspend sentences on various conditions, but [you are] not aware of any authority that prescribes the maximum time limit for which the conditions can be imposed."

As more fully set out below, there appears to be no general statutory provision prescribing "the maximum time limitation that a municipal court judge can impose conditions on suspended sentences." While there are provisions which limit the imposition of certain conditions (community service hours), generally, municipal court judges, as well as magistrates, are given broad discretion in prescribing the period of time for which the conditions shall be imposed and the suspension shall run.

Law/Analysis

As you point out, S.C. Code Ann. §14-25-75 grants municipal court judges the authority to suspend sentences on various conditions. That Section provides that "[a]ny municipal judge may suspend sentences imposed by him upon such terms and conditions as he deems proper including, without limitation, restitution or public service employment." This Section is obviously very broad, giving the judge wide latitude in imposing conditions on suspended sentences. Section 14-25-75 is not the only provision of the Code which indicates that broad discretion in suspending sentences has been granted to municipal court judges. S.C. Code Ann. §17-25-110 states the following:

When the sentence of any person who has been sentenced by a court of competent jurisdiction of this State shall be suspended by a judge of such court such suspension shall run for the period of time prescribed by such judge in the sentence or order of suspension and no person who has had a sentence so suspended shall be called back and required to do service under such sentence beyond and after the expiration of such period.

Section 17-25-110 provides that when a suspended sentence has been imposed by a court of competent jurisdiction, "such suspension shall run for the period of time prescribed by such judge in the sentence or order of suspension" Section 17-25-110 prescribes, however, no limitation on the length of time the period of suspension may run. Moreover, The Bench Book for Magistrates and Municipal Court Judges, III-85, states that "the suspension of sentence upon appropriate terms and conditions, if any, is generally unrestricted except ... that a sentence cannot be suspended below a minimum when such is provided by statute." Again, the implication is that, generally, there are no limitations on the length of time for which a municipal court judge can impose conditions on suspended sentences.

Notwithstanding the above, this latitude granted judges cannot be viewed as completely unlimited.¹ In reviewing a statute similar to Section 14-25-75 granting circuit court judges the power to suspend sentences, our Supreme Court held that "[judges] are allowed a wide, but not unlimited, discretion in imposing conditions of suspension or probation and they cannot impose conditions which are illegal and void as against public policy." State v. Brown, 326 S.E.2d 410, 284 S.C. 407 (1985). The Brown Court also stated that "[t]he public policy of this State is derived by implication from the established law of the State, as found in its Constitution, statutes, and judicial decisions. Id.

In Brown, Id., the Court held that a certain condition of a suspended sentence imposed by the circuit court violated the Constitutional prohibition of cruel and unusual punishment. Therefore, while no limitation appears in the statute granting the power to suspend a sentence, the Constitution provides a boundary to the trial court's authority. Also, specific statutes provide limitations on certain sentencing conditions which may be imposed. For example, Section 16-17-600(C) sets a maximum amount of community service hours which may be imposed for the magistrate/municipal court level offense of grave desecration at five hundred hours (See also §59-150-250 setting 20 hours community service for person under 18 purchasing a lottery ticket). Further, Section 22-3-80, which grants magistrates the power to suspend sentences, contains an express limitation on the amount of

¹ It is my opinion that the phrase "without limitation" within Section 14-25-75 does not provide the authority to impose completely unlimited conditions on suspended sentences. Rather, the judge's authority to impose conditions is not limited simply to restitution and community service.

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hours of community service a magistrate may impose as a condition of a suspended sentence. It seems likely that this limitation also applies to municipal court judges.

Section 22-3-800 provides, in pertinent part, as follows:

Notwithstanding the limitations of Sections 17-25-100 and 24-21-410, after a conviction or plea for an offense within a magistrate's jurisdiction the magistrate at the time of sentence may suspend the imposition or execution of a sentence upon terms and conditions the magistrate considers appropriate, including imposing or suspending up to one hundred hours of community service, except where the amount of community service is established otherwise. (Emphasis added).

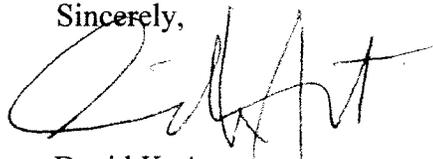
While this limitation does not appear in Section 14-25-75 which grants municipal court judges the power to impose conditions on suspended sentences, Section 14-25-45 provides that "[t]he [municipal] court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." This Office has previously opined that constraints placed upon the sentencing powers of magistrates are also applicable to municipal court judges as the result of the provisions of Section 14-25-45. See OP. ATTY. GEN. DATED MARCH 27, 1995. Therefore, it would be the opinion of this Office that the constraints of Section 22-3-800 regarding community service hours are also applicable to municipal court judges.

Conclusion

Generally, a municipal court judge's authority to impose conditions on suspended sentences is not subject to a maximum time limitation. Public policy as established by the Constitution, statutes and case law may, however, provide such constraints. Public policy violations would have to be determined on a case-by-case basis. Further, a municipal court judge's authority to impose community service as a condition of a suspended sentence is limited by statute.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General