

1981 WL 158186 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 1981

***1 Re: Municipal Courts as Courts of Record**

The Honorable Stephen S. Bartlett
Municipal Judge
City of Greenville
22 W. Broad Street
Greenville, South Carolina

Dear Judge Bartlett:

In your letter to this office of February 18, 1981, you requested an opinion as to whether municipal courts are 'courts of record' so as to qualify municipal judges for judicial membership in the South Carolina Bar. My research indicates that municipal courts are not courts of record.

Black's Law Dictionary defines a court of record as one whose 'acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony'. Although the municipal courts possess other characteristics which are relevant to the determination of whether a court is a court of record (i.e., power to fine and imprison; power to punish for contempt), the primary factor which must be present is the requirement that a permanent record of the proceedings be kept. As is evidenced by the statutory provisions establishing municipal courts, such courts are not required to keep a permanent record. Rather, under [S. C. Code Ann. § 14-25-195 \(1976 Supplement\)](#), the parties have the option to have a record made at their own expense. This is distinguishable from a requirement that a record must be kept with the cost being borne by the court. Therefore, it is our opinion that municipal courts are not 'courts of record' in that a permanent record of the proceedings is not required to be made and kept.

Additional support for this conclusion is given by the fact that the statutes do not specifically provide that municipal courts shall be 'courts of record'. As noted in 21 C.J.S. Courts § 5 (1962), 'a test entitled to considerable weight in determining whether or not a court is one of record is whether the legislature creating the court has or has not declared it to be a court of record.' While the South Carolina Legislature has specifically provided that the Supreme Court (§ 14-3-410), Circuit Courts (§ 14-5-10), County Courts (§ 14-9-110), Family Courts (§ 14-21-420), and Probate Courts (§ 14-23-1120) shall be courts of record, it has made no such statutory acknowledgement of municipal courts being courts of record. It seems, therefore, that by implication the Legislature did not intend that municipal courts be courts of record.

Finally, the South Carolina Court Administration has recently issued an opinion to the South Carolina Bar which is in accord with the position taken by this office. A copy of this opinion is enclosed for your information.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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