

1975 WL 29797 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
May 12, 1975

***1 Re: Discharge and dismissal under Section 32-1510.57**

Gene J. Sausser, Ph. D.
Director
Division of Training
South Carolina Commission on Alcohol and Drug Abuse
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Dear Dr. Sausser:

I am writing in regard to your letter of May 5, 1975, in which you presented this Office with several issues in regard to various aspects of Act No. 445, Section 37, 1971 Acts and Joint Resolutions. This act was amended by Act No. 1068, Section 6, 1974 Acts and Joint Resolutions and at present is unofficially codified at Section 32-1510.57, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended. For the sake of clarity and understanding, any reference to this particular act in this letter will be made to the unofficial citation.

The first issue presented was: 'What is the expungement process and practice as it relates to Section 32-1510.57(b)?' Section 32-1510.57(a) of the law provides a procedure by which an individual whose sanction for a particular drug violation may be a conditional sentence. At the conclusion of such conditional sentence, the Court may dismiss the charges and the individual may then seek to expunge or remove all records incident to the arrest and subsequent prosecution from the Court's files. If the individual is discharged from the conditional sentence and the charges dismissed, he or she must then apply to the same Court, either by petition or some other accepted method, for an order to expunge these records. The Judge after a hearing on the matter shall rule accordingly.

If the Court orders the records expunged, the general procedure that will be followed is that the Clerk of Court will destroy the records in his possession, including deleting any reference to the individual in the Court index, and shall notify the State Law Enforcement Division (SLED) and any other agencies involved of the same. SLED upon receipt of this Order will remove all records and information relating to the said arrest and seal these files and designate these particular records as nonpublic records. Upon subsequent inquiry to SLED of the individual's criminal record no mention will be made of the expunged records. A second issue presented which is closely related to this particular issue is the question as to how second offenders are identified if the records are expunged. The law at Section 32-1510.57(a) states:

'Discharge and Dismissal under this section shall be without court adjudication of guilty and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions.'

Therefore it appears that any expunged record relating to an arrest and conditional sentence under Section 32-1510.57 could not thereafter be used as a 'first offense' in order to try and convict the individual as a second offender. The use of the nonpublic record would be limited to identifying the person who has previously been charged with possession and thereafter discharged under Section 32-1510.57 in order to prevent a subsequent discharge and dismissal under this same section. Section 32-1510.57(a) states: 'Discharge and dismissal under this section may occur only once with respect to

any person.' Disclosure for this purpose is the sole function and reason for the nonpublic record's existence and such disclosure cannot be effected without a Court order specifying the same.

*2 A third issue presented in your letter was that of defining nonpublic records as it is used in Section 32-1510.57(a). Public records is defined in the Freedom of Information Act at Section 1-20.1, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended in the following manner:

'Public records' means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency, regardless of physical forms or characteristics . . .'

Normally records similar in nature to the records relating to the criminal charges under Section 32-1510.57 kept by SLED would be public records and open to inspection by members of the public. Pursuant to Section 32-1510.57(a) the records relating to this procedure are to be 'nonpublic' and therefore not open to public inspection or access. They are in fact kept sealed by SLED and are totally confidential. The classification by statute of these specific records as nonpublic removes them from the general scope of the Freedom of Information Act.

A fourth issue presented in your letter was that of the applicability of Section 32-1510.57 to a drug possessor who is arrested for possession in conjunction with some other criminal offense. Section 32-1510.57 can be applied to offenders: 'Whenever any person who has not previously been convicted of any offense under this article or any offense under any State or Federal statute relating to marihuana, or stimulant, depressant, or hallucinogenic drugs pleads guilty to or is found guilty of possession of a controlled substance under Section 32-1510.49(c) and (d), . . .'

This stated portion of the statute designates who may receive the benefit of the conditional discharge and it does not exclude persons charged with possession as well as some concurrent criminal activity unrelated to drug abuse. If the individual charged with the drug violation is otherwise qualified to receive the diversion under Section 32-1510.57 the concurrent criminal activity will not per se exclude the individual from conditional discharge. The dismissal of the drug charge in this manner would in no way determine the Court's dispersing of the concurrent charge.

I hope this letter and information herein will be of some assistance to you in further understanding Section 32-1510.57, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, and presenting related information at the conference. Feel free to contact me and this office if questions arise in the future.

Very truly yours,

Edwin E. Evans
Staff Attorney

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