

December 18, 2007

The Honorable C. Ryan Johnson
Magistrate, Greenwood County
528 Monument Street, Room 100
Greenwood, South Carolina 29646

Dear Magistrate Johnson:

In a letter to this office you referenced the provisions of S.C. Code Ann. § 17-22-110 which state:

[a]n applicant to an intervention program or an offender who applies to the chief administrative judge of the court of general sessions for admission to a...(pretrial intervention program)...shall pay a nonrefundable application fee of one hundred dollars and, if accepted into the program, a nonrefundable participation fee of two hundred fifty dollars prior to admission.

You referenced a situation where a defendant is charged with an offense. He has no prior criminal history and the offense charged is not excluded from pretrial intervention (PTI) eligibility. He has one hundred dollars on his person on the day he arrives in court and wishes to enter the PTI program. The arresting officer has no objection to his participation and there are no victims. When that defendant goes to the solicitor's office to sign up for PTI, he is turned away because he has only the one hundred dollar application fee and not the additional two hundred fifty dollar participation fee. You have questioned whether it is appropriate for the solicitor to turn away the defendant and prevent the defendant from applying to the PTI program until he has paid both the one hundred dollar application fee and the two hundred fifty dollar participation fee.

Pursuant to S.C. Code Ann. § 17-22-30, a PTI program "...shall be under the direct supervision and control of the circuit solicitor." Prior to being admitted to a PTI program, pursuant to S.C. Code Ann. § 17-22-80, the victim, if there is one, and the law enforcement agency which employs the arresting officer shall be asked to comment in writing as to whether a particular defendant can enter PTI. The solicitor "...shall consider the recommendations of the law enforcement agency and the victim, if any, in making a decision." In the situation addressed by you, there has been no objection by the arresting officer to admission to PTI and there is no victim. Therefore, it appears that a decision regarding acceptance into the PTI program has been made. In such situation, in the opinion of this

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office, we do not see any problem with the requirement that the defendant pay both the one hundred dollar application fee and the two hundred fifty dollar participation fee. As to any difficulties in making payment, Section 17-22-110 states that

[a]ll fees or costs of supervision may be waived partially or totally by the solicitor in cases of indigency. The solicitor may also, if he determines necessary, in situations other than indigency allow scheduling of payments in lieu of lump sum payment.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General