

August 3, 2007

The Honorable Herb Kirsh  
Member, House of Representatives  
Box 31  
Clover, South Carolina 29710

Dear Representative Kirsh:

In a letter to this office you referenced recent legislation, Act No. 82 of 2007, which amends S.C. Code Ann. § 17-1-40. Such provision in subsection (A) authorizes the expungement of records as to individuals “...who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found to be innocent of the charge...” In such circumstances, “...the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency.” The new provision, subsection (B), state that “[a] municipal, county, or state agency may not collect a fee for the destruction of records pursuant to the provisions of this section.”

You forwarded a copy of a letter from the Eighth Circuit Solicitor’s office dealing with the fee collected by that office in association with their responsibilities in the expungement process. Pursuant to an order of Chief Justice Toal dated December 20, 2005, applications for expungements pursuant to various state statutes, including Section 17-1-40 are to “be administered by the Solicitor’s Office in each circuit throughout the State.” By that order, an administrative fee in the amount of \$150.00 per individual order is to be collected by a solicitor’s office and retained by that office. That fee is “...used to defray the costs associated with this process.” As to the role of the solicitor’s office, the order provides that

The Solicitor’s Office shall implement policies and procedures consistent with this Order and guidelines distributed by the Chief Justice through the Office of South Carolina Court Administration to ensure that the expungement process is properly conducted. This would include, but is not limited to: assisting the applicant in completing the order, collecting from the applicant and distributing to the appropriate

The Honorable Herb Kirsh  
Page 2  
August 3, 2007

agencies separate certified checks or money orders for charges prescribed by this Order; coordinating with the South Carolina Law Enforcement Division (SLED) and, in case of juvenile expungements, the Department of Juvenile Justice (DJJ), to confirm that the criminal charge is statutorily appropriate for expungement; obtaining and verifying the presence of all necessary signatures; filing the completed expungement order with the Clerk of Court; and providing copies of the completed expungement order to all governmental agencies which must receive the order.

As stated by the letter from the Eighth Circuit Solicitor's office, and consistent with the duties of a solicitor per the Chief Justice's order set forth above, the \$150 fee collected by a solicitor in such circumstances derives from the solicitor's office's administrative role in the expungement process. As stated by the order, the administrative role is "to ensure that the expungement process is properly conducted" and does not at that point involve the actual physical destruction of a criminal record. Therefore, the \$150 fee for the solicitor's office would not be included in the prohibition on fees for the destruction of records pursuant to Section 17-1-40. As stated by such provision, a particular agency "...may not collect a fee for the destruction of records pursuant to the provisions of this section." The fee for the solicitor's office is not collected for the destruction of records pursuant to such provision; the \$150 fee is for the administrative role in the expungement process.

Moreover, I am informed by individuals familiar with the history of such amendment to Section 17-1-40 that it was never intended that the prohibition on fees include the \$150 fee collected by a solicitor's office. The cardinal rule of statutory construction is that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Moreover, a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Consistent with a prior opinion of this office dated September 6, 2006, any ambiguity in resolving the question of whether the fee collected by a solicitor's office was included in the prohibition of Section 17-1-40 must be resolved by the rule that in determining legislative intent, a court will, if necessary, reject the literal import of words used in a statute. It has been stated that "words ought to be subservient to the intent, and not the intent to the words." Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942).

Therefore, consistent with the above, in the opinion of this office, a solicitor's office may continue to collect the \$150 fee authorized by the Order of the Chief Justice in association with that office's duties in the expungement process authorized by Section 17-1-40.

The Honorable Herb Kirsh  
Page 3  
August 3, 2007

With kind regards, I am,

Very truly yours,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General