

8126 Liberty



HENRY McMASTER
ATTORNEY GENERAL

March 27, 2006

R. Allen Young, Esquire
Mount Pleasant Town Attorney
Post Office Box 745
Mount Pleasant, South Carolina 29465

Dear Mr. Young:

In a letter to this office you questioned the legality of an ordinance which imposed an administrative service fee in the amount of ten dollars on offenders found guilty in the Mount Pleasant municipal court.

In reviewing the constitutionality or validity of a municipal ordinance, this office indicated in a prior opinion dated July 15, 1996 that

...an ordinance, if it should be adopted, would be entitled to the same presumptions of constitutionality to which an enactment of the General Assembly would be. It would be presumed that the ordinance would be constitutional in all respects. The ordinance will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt...All doubts of constitutionality are generally resolved in favor of constitutionality. While this office advises whenever it may identify a particular constitutional infirmity, it is solely within the province of the courts of this State to actually declare an enactment or ordinance unconstitutional or unenforceable for other reasons.

That opinion examined the question of whether or not a municipality would be authorized to pass an ordinance that allowed that particular municipality to charge a thirty-five dollar fee for administrative costs associated with processing expungement orders.

The 1996 opinion cited the provisions of Article V, Section 1 of the State Constitution which the State Supreme Court has construed as mandating a unified and uniform judicial system in this State. See: Cort Industries v. Swirl, 264 S.C. 142, 213 S.E.2d 445 (1975); State ex rel McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978). Such constitutional provision states

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The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.

Municipal courts are also part of the unified and uniform judicial system. City of Pickens v. Schmitz, 297 S.C. 253, 376 S.E.2d 271 (1989).

In Crowe, supra, the Court dealt with legislation that established different fee schedules for magistrate courts. The Court concluded that "(l)egislation establishing disparate fee schedules for magistrate courts over the State conflicts with the uniformity requirements of Article V." 272 S.C. at 47. An opinion of this office dated June 28, 1977 referenced that the Supreme Court

...has held and recognized that Article V of the Constitution mandates a statewide unified judicial system. This constitutional provision and the Court's decisions firmly establish the policy that the judicial system throughout the State be the same from one county to another.

The 1996 opinion referenced above concluded that the municipal ordinance imposing the thirty-five dollar fee relating to expungement orders would be inconsistent with Article V and, therefore, "constitutionally questionable".

Several other prior opinions of this office have dealt with local enactments which were also determined to be inconsistent with the requirements of a uniform court system in this State. An opinion of this office dated March 31, 1988 dealt with the question of whether a municipality could add a surcharge to all uniform traffic tickets resolved in the municipal courts. The opinion stated

...it appears that a surcharge imposed by a particular municipality to be used to defray training costs for municipal police officers would be of doubtful constitutionality. It could be asserted that the imposition of such surcharges by individual municipal courts would be in conflict with the provisions of Article V of the State Constitution which mandate a uniform judicial system in this State. However...only a court could make that determination.

An opinion dated June 19, 1984 dealt with the question of the constitutionality of proposed legislation dealing with court libraries. That legislation would have granted county governing bodies the discretion to add as costs specified amounts upon the forfeiture of bonds or when a fine was imposed and collected in the magistrates' courts. That opinion similarly concluded that such a practice would be inconsistent with the requirements of Article V. The opinion stated that

...by allowing each county the discretion to impose additional costs in order to fund the county library, the proposed bill makes it possible to have a system of non-uniformity with respect to costs in the court system.

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In particular as to the referenced Mount Pleasant ordinance which imposes a ten dollar fee on offenders found guilty in the municipal court, an opinion of this office dated September 15, 1986 similarly dealt with the question of the validity of a county ordinance which taxed four dollars as costs on each defendant found guilty of a criminal offense within the jurisdiction of the magistrates' courts in that county. Citing the requirements of Article V and its mandate of a uniform judicial system in this State, the opinion concluded that the ordinance was of "doubtful constitutionality.

Consistent with the above, it is my opinion that the referenced Mount Pleasant ordinance charging a ten dollar fee on offenders found guilty in the municipal court would be constitutionally questionable. However, as explained above, this Office cannot declare an ordinance to be unconstitutional as it is solely a matter for the courts of this State to actually declare an enactment or ordinance unconstitutional or unenforceable for any reason.

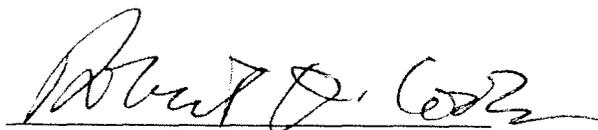
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General