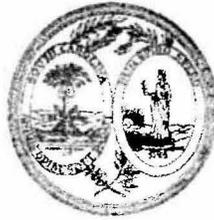


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 7, 2000

The Honorable Glenn G. Reese
Senator, District No. 11
117 Sun Valley Drive
Boiling Springs, South Carolina 29316

Dear Senator Reese,

Thank you for your letter of April 27, 2000, requesting an opinion of this Office. You inquire about a constituent who has a contract to provide the services of his drug-sniffing dogs with several school districts in the state. You write that a sheriff in one of the counties has now offered to provide the same service to the school district. Specifically you wish to know whether the sheriff can bid against the private security service for the contract. You also ask if the sheriff offering the service must do so free of charge.

I will begin by addressing your second question first. Our Supreme Court has consistently recognized that costs and fees "are in the nature of penalties and the statutes granting them have always been strictly construed." State et al. v. Wilder, 198 S.C. 390, 394, 18 S.E.2d 324 (1941). In other words, "statutes providing for fees are to be strictly construed against allowing a fee by implication with respect to both the fixing of the fee and the officer entitled thereto." 67 C.J.S. Officers, § 224. Governing the fees and costs of public officers generally, South Carolina Code of Laws Section 8-21-10 states, "The several officers named in ... Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter... and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated." Moreover, § 8-21-30 of the Code requires that if a Sheriff "improperly" charges a fee, he may be liable for "ten times the amount so improperly charged"

South Carolina Code § 23-19-10 states the general schedule of fees that a sheriff's office may charge for the performance of some of their duties. The statute begins: "Except as otherwise expressly provided by general law, the fees and commissions of sheriffs are as follows" (emphasis added). The statute presents a detailed list of the circumstances in which the sheriff is allowed to charge a fee, including for the service of civil process, commission on monies collected, and for

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claim and delivery actions. The statute ends: "The provisions of this section do not apply to criminal processes or cases," which has been interpreted by this Office to a further restrict the sheriff from charging fees in criminal processes. See Op. Atty. Gen. Jan 27, 2000. Only a few additional statutes permit the sheriff to collect fees for other particular services, such as §12-59-110 (compensation for serving warrants and taking possession of forfeited property), §15-17-540 (fee for summoning freeholders of property), and § 38-57-260 (fee for levy on debtor's property). There appears to be no authorization granted to the sheriff to charge a fee for the use of drug-sniffing dogs. In fact, there is only little statutory authority directly addressing any use of animals by law enforcement officers.

Thus, given the rule that fee statutes must be strictly construed against the charging of fees not expressly authorized, the specific prohibition in § 8-21-10 against the charging of fees not enumerated in the statutes, and the absence of any express authority to charge a fee for the provision of drug-sniffing dogs, it is the opinion of this Office that a sheriff who has the resources to provide such a service to a school district must do so free of charge. Furthermore, simply as a matter of public policy, the sheriff of a county cannot receive remuneration for the performance of a duty imposed on him by law. See Op. Atty. Gen. April 11, 1985. Although no statute mandates the sheriff's use of drug-sniffing dogs, the service certainly falls under his general law enforcement responsibilities.

Finally, reaching the above conclusion renders your first question moot. A sheriff who cannot charge a fee to provide the services of his drug-sniffing dogs to schools should not be involved in any bid competition for a contract with a school district.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General