



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

August 10, 1999

W. S. Hanks, Chief of Police  
Honea Path Police Department  
30 N. Main Street  
Honea Path, South Carolina 29654

Dear Chief Hanks:

In a letter to this office you questioned whether a defendant can repeatedly be held in contempt of court for failure to make restitution payments until the restitution payments are made. You also referenced a situation where you contend the defendant is unable to make restitution payments and questioned whether that defendant can be held in contempt of court and thereby sentenced to additional jail time for failure to make restitution.

Pursuant to S.C. Code Ann. §22-3-550 (1998), a magistrate may order a criminal defendant to make restitution to a crime victim for any monetary or property loss that resulted from a crime. A prior opinion of this office dated April 21, 1995 stated that "...it is well recognized that the failure to pay money in compliance with an order of the court may also constitute contempt of court...." The opinion further advised "(s)hould the Court order a fee schedule for payment of restitution by an indigent, the schedule could be similar to that authorized for the payment of fines in Section 17-25-350 of the Code...."

S.C. Code Ann. § 17-25-350 (1985) provides

In any offense carrying a fine or imprisonment, the judge or magistrate hearing the case shall, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine, taking into

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consideration the income, dependents and necessities of life of the individual. Such payments shall be made to the magistrate or clerk of court as the case may be until such fine is paid in full. Failure to comply with the payment schedule shall constitute contempt of court; however, imprisonment for contempt may not exceed the amount of time of the original sentence, and where part of the fine has been paid the imprisonment cannot exceed the remaining pro rata portion of the sentence. No person found to be indigent shall be imprisoned because of inability to pay the fine in full at the time of conviction.

The referenced opinion concluded:

...court-ordered restitution imposed in addition to a fine or imprisonment should be paid by a defendant. There is no time limit for collection thereof and it would appear that all possibilities should be explored and perseverance maintained. If a defendant is indigent and cannot pay, the Court could establish a fee schedule for payment using Section 17-25-350 as an analogy. The Court maintains jurisdiction to monitor the progress of payment, and based upon all the facts and circumstances could modify the schedule..., or, if necessary, where the defendant failed to pay pursuant to the schedule contempt of court would be a remedy, just as it is with Section 17-25-350. If the defendant were not indigent, and simply refused to pay, again, contempt of court would appear to be an option for enforcement.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kind regards, I am,

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles H. Richardson", with a long horizontal flourish extending to the right.

Charles H. Richardson  
Senior Assistant Attorney General

kws