



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 15, 1999

Mia McLeod Butler, Director
State Office of Victim Assistance
Office of the Governor
1205 Pendleton Street, Room 401
Columbia, South Carolina 29201

Dear Ms. Butler:

Your recent opinion request has been forwarded to me for reply. In your request, you state:

With the passage of Acts 141, 343, and most recently S.585, there still remains some confusion about the identity of entities that are to receive the monies collected under the authority of the above mentioned Acts, and the role of the agencies collecting those monies.

We have received inquiries concerning the possibility that many counties and municipalities are withholding the fines, fees, assessments, and surcharges, or spending the funds on unrelated projects, without appropriating the funds to the entities that are tasked with the duties.

You have asked whether the revenue generated pursuant to these Acts must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16 of the South Carolina Code of Laws or whether a county or municipality is free to use the revenue to fund projects unrelated to the provision of victim services.

The relevant portions of the Acts referred to in your request are codified as S.C. Code Ann. §§ 14-1-206 through 208 (hereinafter the "assessment statutes") and § 14-1-211 (hereinafter the "surcharge statute"). These statutes impose assessments and surcharges on individuals who are convicted of, plead guilty or nolo contendere to, or forfeit bond for

offenses tried in various courts of the state. These statutes establish the manner in which the assessments and surcharges are to be collected and appropriated, including appropriation to victims' assistance programs required by law.

Section 14-1-206 calls for the imposition of an assessment on individuals who are convicted of, plead guilty or nolo contendere to, or forfeit bond for offenses tried in general sessions court. This section provides in pertinent part as follows:

(A) Beginning January 1, 1995, and continuously after that date, a person who is convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense tried in general sessions court must pay an amount equal to one hundred percent of the fine imposed as an assessment. This assessment must be paid to the clerk of court in the county in which the criminal judgment is rendered for remittance to the State Treasurer by the county treasurer. The assessment is based upon that portion of the fine that is not suspended and assessments must not be waived, reduced, or suspended.

(B) The county treasurer must remit thirty-eight percent of the revenue generated by the assessment imposed in subsection (A) to the county to be used for the purposes set forth in subsection (D) and remit the balance of the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month and make reports on a form and in a manner prescribed by the State Treasurer. Assessments paid in installments must be remitted as received.

...

(D) The revenue retained by the county under subsection (B) must be used for the provision of services for the victims of crime including those required by law. *These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16, and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. All unused funds must be carried forward from year to year and used exclusively for the provision of services for victims of crime. All unused funds must be separately identified in the governmental entity's adopted budget as funds unused and carried forward from previous years. (emphasis added).*

Section 14-1-207 imposes an assessment on those individuals convicted of, plead guilty or nolo contendere to, or forfeit bond for offenses tried in magistrate's court. This section provides in part as follows:

(A) Beginning January 1, 1995, and continuously after that date, a person who is convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense tried in magistrate's court must pay an amount equal to 100 percent of the fine imposed as an assessment. This assessment must be paid to the magistrate and deposited as required by Section 22-1-70 in the county in which the criminal judgment is rendered for remittance to the State Treasurer by the county treasurer. The assessment is based upon that portion of the fine that is not suspended and assessments must not be waived, reduced, or suspended.

(B) The county treasurer must remit 12 percent of the revenue generated by the assessment imposed in subsection (A) to the county to be used for the purposes set forth in subsection (D) and remit the balance of the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month and make reports on a form and in a manner prescribed by the State Treasurer. Assessments paid in installments must be remitted as received.

...

(D) The revenue retained by the county under subsection (B) must be used for the provision of services for the victims of crime including those required by law. *These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. All unused funds must be carried forward from year to year and used exclusively for the provision of services for victims of crime. All unused funds must be separately identified in the governmental entity's adopted budget as funds unused and carried forward from previous years. (emphasis added).*

Section 14-1-208 calls for the imposition of an assessment on those individuals convicted of, plead guilty or nolo contendere to, or forfeit bond for offenses tried in municipal court. This section provides in part as follows:

(A) Beginning January 1, 1995, and continuously after that date, a person who is convicted of, or pleads guilty or nolo contendere to, or forfeits bond for an offense tried in municipal court must pay an amount equal to 74 percent of the fine imposed as an assessment. This assessment must be paid to the municipal clerk of court and deposited with the city treasurer for remittance to the State Treasurer. The assessment is based upon that portion of the fine that is not suspended, and assessments must not be waived, reduced, or suspended.

(B) The city treasurer must remit 16.22 percent of the revenue generated by the assessment imposed in subsection (A) to the municipality to be used for the purposes set forth in subsection (D) and remit the balance of the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month and make reports on a form and in a manner prescribed by the State Treasurer. Assessments paid in installments must be remitted as received.

...

(D) The revenue retained by the municipality under subsection (B) must be used for the provision of services for the victims of crime including those required by law. *These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. All unused funds must be carried forward from year to year and used exclusively for the provision of services for victims of crime. All unused funds must be separately identified in the governmental entity's adopted budget as funds unused and carried forward from previous years. (emphasis added).*

Finally, Section 14-1-211 imposes a surcharge on all convictions obtained in general sessions, magistrate's and municipal courts. This section provides in part as follows:

(A) In addition to all other assessments and surcharges, a one hundred dollar surcharge is imposed on all convictions obtained in general sessions court and a twenty-five dollar surcharge is imposed on all convictions obtained in magistrate's and municipal court in this State. The surcharge must not be imposed on convictions for misdemeanor traffic offenses. However, the surcharge applies to all violations of Section 56-5-2930, driving under the influence of liquor, drugs, or like substances. No portion of the surcharge may be waived, reduced, or suspended.

(B) The revenue collected pursuant to subsection (A) must be retained by the jurisdiction which heard or processed the case and paid to the city or county treasurer, for the purpose of providing services for the victims of crime, including those required by law. Any funds retained by the county or city treasurer pursuant to subsection (A) must be deposited into a separate account for the exclusive use for all activities related to the requirements contained in this provision. For the purpose of funds allocation and expenditure, these funds are a part of the general funds of the city or county. *These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. These funds must be used for, but are not limited to, salaries, equipment that includes computer equipment and internet access, or other expenditures necessary for providing services to crime victims. All unused funds must be carried forward from year to year and used exclusively for the provision of services to the victims of crime. All unused funds must be separately identified in the governmental entity's adopted budget as funds unused and carried forward from previous years. (emphasis added).*

Article 15 of Title 16, cited in the assessment statutes and the surcharge statute, is entitled "Victim and Witness Service." This article was adopted to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in the article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than protections afforded criminal defendants; and that the State has a responsibility to provide support to a network of services for victims of crime, including victims of domestic violence and criminal sexual assault. To ensure that these purposes are carried out, the article sets forth the responsibilities of law enforcement agencies, prosecuting agencies, summary courts, departments and agencies having custody or custodial supervision of persons accused, convicted, or adjudicated delinquent of committing offenses, the Office of the Attorney General, the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice.

A number of principles of statutory construction are important in resolving your inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The

words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The Court must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

The assessment statutes require the county or municipal treasurer to remit a certain percentage of the revenue generated by the statutes to the county or municipality.¹ This revenue must then be appropriated by the county or municipality "for the *exclusive* purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts." The revenue must first be used to fund victims' assistance programs required by Article 15 of Title 16 and second to fund programs which expand upon these requirements. Any unused funds "must be carried forward from year to year and used *exclusively* for the provision of services for victims of crime."

The revenue generated by the surcharge statute must be retained by the jurisdiction which heard or processed the case and paid to the city or county treasurer. These funds "must be deposited in a separate account for the *exclusive* use for all activities related to the requirements" contained in the statute. This revenue must be appropriated "for the *exclusive* purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts." The revenue must first be used to fund victims' assistance programs required by Article 15 of Title 16 and second to fund programs which expand upon these requirements. These funds must be used for, but are not limited to, salaries, equipment that includes computer equipment and internet access, or other expenditures necessary for providing service to crime victims. Any unused funds "must be carried forward from year to year and used *exclusively* for the provision of services to the victims of crime."

When addressing the appropriation of revenue generated by the assessment statutes and the surcharge statute, the General Assembly has chosen the word "exclusive," as highlighted in the preceding paragraphs. The word "exclusive" is commonly defined as meaning: "1. Excluding or tending to exclude. 2. Not divided or shared with others. 3. Not

¹ A certain percentage of the revenue generated must also be remitted to the State Treasurer for purposes set forth in the statutes.

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accompanied by others; single or sole. 4. Complete; undivided." The American Heritage Dictionary 478 (3rd ed. 1993).

Applying the plain and ordinary meaning of the word "exclusive" to the assessment statutes and the surcharge statute leads to the following conclusions: revenue generated by these statutes must be used for the sole and undivided purpose of funding the victims' assistance programs of local law enforcement, local detention facilities, prosecutors, and the summary courts required by Article 15 of Title 16. After these programs are funded, a county or municipality may appropriate remaining revenue to programs which expand victim services beyond those required by Article 15 of Title 16. A county or municipality may not use the revenue generated by the statutes to fund projects or matters unrelated to victim services. Furthermore, local law enforcement, local detention facilities, prosecutors, and the summary courts may not use the appropriated funds on projects or matters unrelated to victim services.

With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General

REVIEWED AND APPROVED BY:



Zeb C. Williams, III
Deputy Attorney General