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# The State of South Carolina



## Office of the Attorney General

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March 14, 1989

C. Wade Cleveland, Esquire  
The School District of  
Greenville County  
301 Camperdown Way  
Box 2848  
Greenville, SC 29602

Dear Wade:

You have requested the opinion of this Office as to whether The School District of Greenville County is entitled to fifty cents from each marriage license fee being charged by the Greenville County Probate Court pursuant to §20-1-370(4) of the Code of Laws of South Carolina, 1976. That statute provides for exceptions for Greenville County, and some other counties, as to the distribution of the fees charged for the issuance of a marriage license pursuant to §20-1-230 of the Code. Although 1978 Ops. Atty. Gen. No. 78-196 concluded that the fees collected pursuant to §20-1-370 should become the property of the county pursuant to §14-23-1060 of the Code, you note that, subsequently to the 1978 Opinion, §14-23-1060 was repealed by implication by Act 164 Part I §2A, Acts and Joint Resolutions of South Carolina, 1979. See 1988 Supplement, §14-23-1060. Therefore, you believe that Opinion 78-196 is no longer applicable to this matter because it relied upon the statute that was subsequently repealed.

Your conclusion appears to be correct that §14-23-1060 would no longer be controlling because it was repealed by implication; however, two subsequent Opinions of this Office have concluded that legislation attempting to establish a fee schedule for marriage licenses issued in a particular county would violate Article V of the South Carolina Constitution concerning the Uniform Judicial System. (Ops. Atty. Gen. August 6, 1986 and March 6, 1984). Therefore, §20-1-370(4) appears to be constitutionally suspect under Article V of the constitution.

Mr. Cleveland

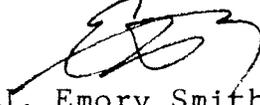
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The March 6, 1984 Opinion also noted that the establishment of a special fee in the probate court of only one county would constitute a special law where a general law could be made applicable in violation of Article III Section 34(IX) of the Constitution. Whether that provision would bar the fee in question here need not be addressed because of the conclusions about Article V.

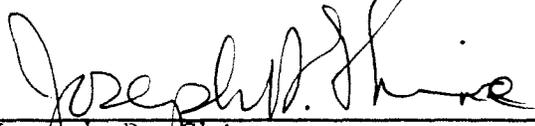
In conclusion, §20-1-370(4), as it applies to the distribution of the marriage license fees in Greenville county, is constitutionally suspect under Article V of the constitution.

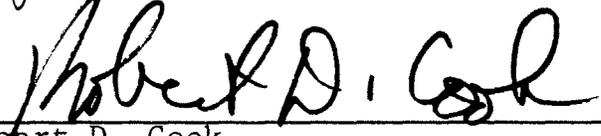
Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JES:ds

REVIEWED AND APPROVED:

  
\_\_\_\_\_  
Joseph D. Shine  
Chief Deputy Attorney General

  
\_\_\_\_\_  
Robert D. Cook  
Executive Assistant for Opinions