3731 Library

The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

September 25, 1989

George A. Markert, Assistant Director
South Carolina Court Administration
Post Office Box 50447
Columbia, South Carolina 29250

Dear George:

In a letter to this Office you indicated that clerks of court and magistrates regularly hold large sums of bail bond money in their official accounts. Typically, most of these funds are forfeited with amounts going to the county or State along with the sums collected for various assessments, such as the Criminal Justice Academy and the Law Enforcement Hall of Fame. You stated that clerks of court and magistrates would like to invest these sums in interest-bearing accounts. Referencing such you have asked:

(1)(a) For pending cases, in magistrate courts, to whose benefit would interest on bail bond monies inure?

(b) Assuming assessments have also been collected on behalf of the Criminal Justice Academy, Hall of Fame, S.L.E.D., etc., would the answer to (1) (a) be different?

(2)(a) For pending cases in the courts of general sessions, to whose benefit would interest on bail bond monies inure?

(b) Assuming assessments have also been collected, would the answer to (2)(a) be different?

(3)(a) For disposed cases in magistrate courts, to whose benefit would interest inure on bail bond monies, from date of disposition forward?

(b) Assuming assessments have also been collected, would the answer to (3)(a) be different?

(4)(a) For disposed cases in the courts of general sessions, to whose benefit would interest inure on bail bond monies, from date of disposition forward?

(b) Assuming assessments have also been collected, would the interest to (4)(a) be different?

As referenced in your letter, an opinion of this Office dated June 10, 1982 dealt with the question of whether a clerk of court may invest in a short term account certain funds held by the clerk. The type funds included judgments from civil cases, cash bonds collected by magistrates and restitution paid in court. The opinion stated:

> A review of the Code reveals no specific authority for such investments, but Section 11-1-20 does provide for the disposition of funds earned as interest collected on funds deposited by county officers. This section thus appears to take for granted the power of a Clerk of Court to make such investments. The Supreme Court similarly took this power for granted in the case of U.S.C. v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). However, the same case provides that where the funds are owing to some private individual, the interest must go to the same person who is entitled to the funds. Thus, if the category which you refer to as judgments, etc. from civil cases is actually private money held in escrow, the interest on the funds would have to also go to the private owners.1/

1/ Section 11-1-20 of the Code states

> (a)ll State, county and municipal officers depositing funds at interest in any bank or other depository shall account to the State, county or municipality, as the case may be, for all interest collected upon such deposits.

A violation of such provision is a misdemeanor. The State Supreme Court in the Elliott case noted that the caption to Section 11-1-20 reads "(i)nterest on deposits of public funds." The Court stated

> (s)ince it is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature, we think that such statute has no application unless the funds deposited by the University with the clerk were "public funds."

248 S.C. at 221. The Court further noted that in Chandler v. Britton, et al., 197 S.C. 303, 15 S.E.2d 344 it was determined that funds on deposit with a clerk of court by private litigants are not "public funds" for purposes of Section 11-1-20.

In another opinion of this Office, 1965 Op.Atty.Gen.No. 1802 it was stated

> (w)here a clerk of court receives deposits of money from litigants, and deposits such monies in his individual name or as clerk of court, the interest becomes a part of the principal amount and does not at any time, become the property of the Clerk.

Such opinion stated further

> (i)t is generally held, irrespective of the liability of the public official having custody of the funds, that the ownership of the public funds does not pass to the custodian and that a public officer is bound to account for interest which he receives on money which comes to his hands by virtue of his office.

Such is consistent with the statement by the Oklahoma Supreme Court in Independent School District No. 1 v. Board of City Commissioners, 674 P.2d 547 at 550 (1983) where the Court recognized "the rule of law that interest is an accretion or increment to the principal fund earning it absent legislation... ." See also: Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980).

Statutory provisions authorize the deposit of funds with a court in lieu of entering into a recognizance. See: Sections 17-15-15, 17-15-190, 17-15-200, 22-5-530 of the Code. Pursuant to various provisions, upon fulfillment of the condition of a bond, amounts deposited are typically returned to a defendant, except where otherwise provided, such as where the deposit is used for restitution to a victim. See: Sections 17-15-15, 17-15-220 of the Code. Moreover, Section 24-23-210 of the Code states that as to the assessment provided by such provision, "(i)f the person is not convicted of the offense with which he is charged, the assessment must be returned to him at the same time his bond is returned." These provisions mandating the return of certain bail bond money are consistent with an opinion of the Florida Attorney General dated September 23, 1982 where it was stated:

> (a)s a general rule, money deposited as bail under a statue providing therefor is, for purposes of the deposit, conclusively presumed to be the property of the accused although it may be forfeited if the person for whom bail has been

> granted fails to comply with the conditions of the bail bond; money deposited in lieu of bail with an officer is held in trust by such officer for the state until forfeited upon default.

Referencing the above, as to pending cases, any funds deposited as bail should be construed as the property of the individual making the deposit. Therefore, any interest generated on bail bond funds or assessments pertaining to a pending case in General Sessions or magistrate's court would appear to be the property of the individual making the deposit.

If it was desired that any interest generated on such pending cases go elsewhere, consideration could be given to legislation which would specifically provide that any interest generated on such funds would be payable to whatever entity is considered appropriate. Also, presumably such statute would provide for the disposition of any interest generated by the funds collected for any statutorily-provided assessments such as those referenced in your letter. 2/ Obviously, it may be difficult to precisely compute the interest generated by the various individual assessments if all interest is not made payable to one entity. As to any questions concerning the constitutionality of such a provision, in Fresno Fire Fighters Local 753 v. Jernigan, 222 Cal. Rptr. 886 (9186) a California Court of Appeals upheld a California statute which provided that interest earned on bail funds deposited in an account are to be allocated for the support of the courts in a county.

As to disposed cases, I assume you are referencing those situations where any bail funds are forfeited as payment of a fine imposed by a court. As to funds in payment of fines in a magistrate's court, Section 22-1-70 of the Code states:

> (a)ll fines and penalties imposed and collected by magistrates in criminal cases must be turned over by them to the county treasurers of their respective counties for county purposes.

2/ I would note that in the opinion dated September 23, 1982 referenced previously, the Florida Attorney General concluded that in the absence of statutory provisions specifically authorizing the investment of cash bail funds, which the opinion concluded belonged to the accused who is entitled to their return absent a default of forfeiture, an investment of these funds by a county officer is not authorized.

I assume that county treasurers would place such revenues in interest-bearing accounts. As referenced in the June 10, 1982 opinion of this Office, Section 11-1-10 of the Code would apparently authorize such investments.

As to fines generated in the courts of general sessions from any bail funds forfeited as payment of a fine, Section 20-7-1510 of the Code states:

> Except for those drug fines and forfeitures remitted to the Department of Mental Health as provided in §44-53-580, and except for those fines and forfeitures for game or fish law violations used for the purposes enumerated in §50-1-150 and 50-1-170, on July 1, 1977, three-fourths of all costs, fees, fines, penalties, forfeitures and other revenues generated by the circuit courts and the family courts established by this chapter shall be paid over to the county in which the proceeding is instituted and one-fourth of such revenues shall be remitted to the State for use in deferring the costs of the unified court system. The provisions of this section shall specifically not apply to any fine, penalty, forfeiture or other revenue generated in the magistrates' or municipal courts of this State.

I assume that such funds would also be placed in interest-bearing accounts by the respective State and county officials to whom the funds are forfeited.

As to the assessments resulting from cases disposed in a magistrate's court or court of general sessions, statutory provisions, such as Sections 14-1-220, 23-23-70 and 24-23-220 of the Code indicate how transmittals of the assessments are made. Typically, the transmittals are made by the courts to the county treasurers. The county treasurer then forwards the assessments to the State Treasurer. The transmittals are made within a specified time period. It appears that to avoid any questions as to how any interest generated on assessments while in an interest-bearing account are to be handled, legislation should be sought specifically addressing the interest question. Again, as in the situation addressed previously, it may be difficult to compute precisely the interest generated by the various individual assessments if all interest is not made payable to a single entity.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions