

The State of South Carolina



Office of the Attorney General

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March 31, 1988

Opinion No 88-29  
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Samuel R. Clawson, Esquire  
Goose Creek City Attorney  
Post Office Box 358  
Charleston, South Carolina 29402

Dear Mr. Clawson:

As attorney for the City of Goose Creek you have requested an opinion of this Office as to whether the City could add a surcharge to all uniform traffic tickets that are resolved in the City's municipal court in an effort to help defray training costs in the City police department.

By State statute, several costs and assessments are authorized. For instance, the State law enforcement training fee, the State Law Enforcement Hall of Fame Committee fee (Section 23-23-70), the community corrections assessment (Section 24-23-210), and the local correctional facilities assessment (Section 14-1-210) are examples of fees or assessments established by the General Assembly which are collected statewide by municipal judges.

While I am unaware of any prior opinions of this Office dealing with surcharges on criminal defendants, several prior opinions have dealt with the issue of court costs. An opinion dated May 8, 1984 stated that in criminal cases "... the recovery and allowance of costs rests entirely on statutory provisions ... no right to or liability for costs exists in the absence of statutory authorization." See also: Opinion dated April 16, 1979. I am unaware of any State statutory provisions expressly providing for the imposition by a city of a surcharge to uniform traffic tickets which would be used to defray training costs for city policemen.

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An opinion of this Office issued March 17, 1988 dealt with the question of the authority of individual magistrates or municipal judges to impose court costs at their discretion. The question was also asked as to whether such court costs would have to be authorized by municipal or county ordinance. The opinion referenced a prior opinion of this Office dated June 19, 1984 which considered the constitutionality of certain proposed legislation dealing with court libraries. The legislation, if it had been enacted, would have authorized county governing bodies to add as costs specified amounts upon the forfeiture of a bond in the magistrate's court or when a fine was imposed and collected in the magistrate's court or circuit court. Such amounts collected were to be used to fund court libraries.

In advising that the proposed legislation was of doubtful constitutionality, the 1984 opinion stated:

(b) by allowing each county the discretion to impose additional costs in order to fund the court library, the proposed bill makes it possible to have a system of non-uniformity with respect to such costs in the court system. Such disparate treatment is in apparent violation of Article V of the South Carolina Constitution (1985 as amended) which requires a uniform judicial system. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978). While the Crowe case related to fees collected by magistrates, this office has concluded that the requirements of Article V related also to fines, Op. Atty. Gen., March 2, 1981, and we see no reason why forfeitures would not be included as well.

Consistent with such, an opinion of this Office dated September 15, 1986 concluded that a county ordinance which taxed certain costs on every defendant found guilty in the magistrates' courts was of doubtful constitutionality inasmuch as it appeared to be violative of the provisions of Article V of the State Constitution which mandate a uniform judicial system in this State. The opinion noted of course that this Office possessed no authority to declare a county ordinance unconstitutional; only a court would have such authority.

Consistent with such prior opinions, the March 17, 1988 opinion concluded that the practice of imposing court costs at the discretion of individual magistrates or municipal judges

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beyond those generally authorized by state statute would be of doubtful constitutionality in light of the provisions of Article V of the State Constitution. Also, it was determined that the authorization of such separate costs by municipal or county ordinance would similarly appear to be of doubtful constitutionality.

Consistent with the above, it appears that a surcharge imposed by a particular municipality to be used to defray training costs for municipal police officers would be of doubtful constitutionality. It could be asserted that the imposition of such surcharges by individual municipal courts would be in conflict with the provisions of Article V of the State Constitution which mandate a uniform judicial system in this State. However, as noted above, only a court could make such a determination.

With best wishes, I am

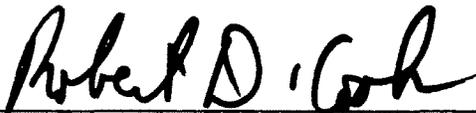
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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