

The State of South Carolina



Office of the Attorney General

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March 17, 1988

Henry Ray Wengrow, Esquire
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Dear Henry:

In a letter to this Office you questioned whether court costs can be imposed at the discretion of an individual magistrate or municipal judge. You also asked whether such court costs would have to be authorized by municipal or county ordinance.

By statute several costs and assessments are presently 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 magistrates and municipal judges.

Several prior opinions of this Office 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 of court costs at the discretion of an individual magistrate or municipal judge which are beyond those set forth by general statute, such as the costs and assessments noted above. Also, I am unaware of any State statute specifically authorizing

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the establishment of such by municipal or county ordinance. Moreover, a strong argument exists that any such practices may be of doubtful constitutionality. An opinion of this Office dated September 15, 1986 dealt with the question of the validity of a county ordinance which taxed a certain sum as costs on every defendant found guilty of a criminal offense within the jurisdiction of a county magistrate. The opinion noted that in 1973 the General Assembly ratified the provisions of Article V of the State Constitution which provide for a uniform judicial system in this State. The South Carolina Supreme Court has consistently held that inasmuch as the establishment of a uniform judicial system is mandatory, provisions which extend or perpetuate a nonuniform system or which postpone or defeat the requirements of Article V must be considered to be unconstitutional. State ex rel. McLeod v. Civil and Criminal Court of Horry County et al., 265 S.C. 114, 217 S.E.2d 23 (1975); State ex rel. McLeod v. Court of Probate of Colleton County et al., 266 S.C. 279, 223 S.E.2d 166 (1975).

The 1986 opinion noted that a previous opinion of this Office dated June 19, 1984 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)y 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

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to fines, Op. Atty. Gen., March 2, 1981,
and we see no reason why forfeitures would
not be included as well.

Consistent with such, the 1986 opinion concluded that the 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, it appears that the practice of imposing court costs at the discretion of individual magistrates or municipal judges 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, the authorization of such separate costs by municipal or county ordinance would similarly appear to be of doubtful constitutionality.

If there is anything further, please advise.

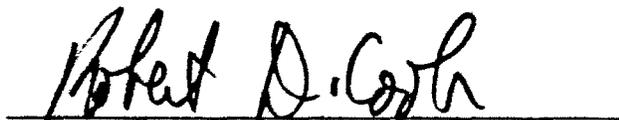
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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