

The State of South Carolina



Office of the Attorney General

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September 24, 1987

Motte L. Talley, Esquire
Staff Attorney
South Carolina Court Administration
P. O. Box 50447
Columbia, South Carolina 29250

Dear Mr. Talley:

You have requested the advice of this Office as to the compensation to be paid special referees or masters. You have also asked whether any such compensation may be retained by clerks of court and probate judges appointed to serve in those positions.

As to the appropriate amounts of money to be paid to special referees and masters, I am enclosing a copy of a previous opinion of this Office that references the fee statute for masters, §14-11-310 of the Code of Laws of South Carolina, 1976. That opinion concluded that the fees to be paid to a special referee should be decided by the court upon a case to case basis. Ops. Atty. Gen., January 8, 1987 (by B.J. Willoughby). If you have any questions concerning masters fees that are not addressed by §14-11-310, please let me know.

As to your question concerning whether probate judges and clerks of court may retain money paid for their service as masters or special referees, I refer you to two other previous opinions of this Office that address the right of clerks of court and probate judges to retain certain fees or compensation. Ops. Atty. Gen., January 8, 1987 (by Emory Smith) and August 20, 1986. Both of these opinions concluded that the strong legislative intent that clerks of court and probate judges receive salaries in lieu of most fees and cost indicated that the clerks and judges should not retain as compensation the fees in question in those opinions even though the schedules of fees and costs for the clerks and judges did not specifically reference those particular fees. See §§8-21-300 and 8-21-760 of the Code. Under the reasoning expressed in these opinions, the safest legal course of action for clerks and probate judges would be for them not to retain money paid for their serving

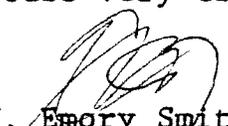
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as special referees and masters. Although some authority to the contrary is provided by earlier opinions of this Office, those opinions preceded the passage of the salary statutes for clerks and probate judges referenced above. Ops. Atty. Gen., December 13, 1976 and December 12, 1967; but cf., Ops. Atty. Gen., February 3, 1981.

In conclusion, fees for masters are set by statute and those for special referees are fixed by the court on a case by case basis. The safest legal course of action for probate judges and clerks of court appointed to serve in those positions would be for them not to retain such fees as personal compensation.

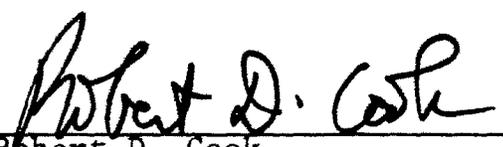
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj
Enclosures

REVIEWED AND APPROVED:



Robert D. Cook
Deputy Attorney General