

# The State of South Carolina



## Office of the Attorney General

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September 15, 1986

George A. Markert, Assistant Director  
South Carolina Court Administration  
P. O. Box 50447  
Columbia, South Carolina 29250

Dear Mr. Markert:

In a letter to this Office you questioned the validity of an ordinance enacted by the Dillon County Council in 1985. Such ordinance taxes four (\$4.00) dollars as costs on every defendant found guilty of a criminal offense within the jurisdiction of a Dillon County magistrate.

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).

In a previous opinion of this Office dated June 19, 1984, the constitutionality of certain proposed legislation dealing with court libraries was considered. 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.

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In advising that the proposed legislation was of doubtful constitutionality, the 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 relate also to fines, Op. Atty. Gen., March 2, 1981, and we see no reason why forfeitures would not be included as well.

Referencing the above, it appears that the ordinance in Dillon County which taxes four dollars as costs on every defendant found guilty in the magistrates' courts is of doubtful constitutionality inasmuch as it appears to be violative of the provisions of Article V of the State Constitution which mandate a uniform judicial system in this State. Of course, this Office possesses no authority to declare a county ordinance unconstitutional; only a court would have such authority. If there are any questions, please advise.

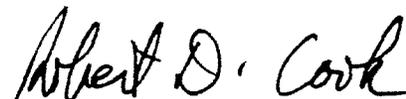
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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