

The State of South Carolina

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Opinion No 87-1
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Office of the Attorney General

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January 8, 1987

S. Jeff Boyd
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South Carolina Court Administration
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Dear Jeff:

You have requested the advice of this Office as to whether clerks of courts may receive, as personal income, commissions from the sale of South Carolina Tax Commission documentary stamps. Section 12-21-10 of the Code of Laws of South Carolina (1976) provides that "[c]ounty treasurers and other county officers designated by the Commission shall assist [the Commission] by... selling stamps...and in other ways not inconsistent with their respective offices to the extent and in the manner required by regulations of the Commission." Section 12-21-30 provides that the Commission "...may engage any person to sell tax stamps and shall allow as compensation for receiving, selling and accounting for such stamps three percent of the sale price thereof." (Emphasis added.)


This question appears to be controlled by §8-21-300 which provides, in part, that clerks of court shall receive salaries and that all fees and cost received by them under the provisions of Art. V of Chapter 21 of Title 8 shall be paid into the county general fund. This "...statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute." Spartanburg Sanitary Sewer District v. City of Spartanburg, et al., 321 S.E.2d 258 (SC 1984). The strong intention expressed in §8-21-300 that clerks of court receive salaries and that fees and costs be paid into the county general fund indicates that these restrictions may apply to at least some fees and costs other than those specifically referenced in §8-21-300. Id. Because §§12-21-10 and 12-21-30 give the Tax Commission the discretion to choose officers to sell stamps for compensation without expressly referencing clerks of court, the strong legislative intent expressed in §8-21-300 appears to be guiding and the safest legal course of action for clerks of court would appear to be for them not to retain compensation from the sale of stamps. Sutherland Statutory Construction, Vol. 2A, §51.02; Ops. Atty. Gen. (July 12, 1985).

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This conclusion that §8-21-30 is controlling is consistent with a previous opinion of this Office which construes a similar statute, §21-23-40, as barring Probate Judges from retaining certain fees not referenced in that statute. Ops. Atty. Gen., (August 20, 1986). This conclusion is also consistent with local legislation for some counties which has expressly provided that the clerks of court in those counties shall be paid salaries in lieu of the retention of all fees, etc. See §§14-2101 (Greenville County) and 14-3351 (Spartanburg County) of the 1962 Code; see e.g. 1965-66 Ops. Atty. Gen. #1894.

In conclusion, the safest legal course of action appears to be for clerks of court not to retain compensation paid by the Tax Commission for the sale of documentary stamps under §12-21-30 because of the strong legislative intent expressed in §8-21-300 that clerks be placed on a salaried income only. If you have any questions or need additional assistance, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr:st

REVIEWED AND APPROVED:



Frank K. Sloan
Chief Deputy Attorney General

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Robert D. Cook
Executive Assistant for Opinions

cc: Louis L. Rosen, Director
South Carolina Court Administration