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Office of the Attorney General

*Opinion No. 85-50*  
*2157*

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

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May 20, 1985

William S. Hall, M.D.  
State Commissioner  
S. C. Department of Mental Health  
P. O. Box 485  
Columbia, SC 29202

Dear Dr. Hall:

In your letter of March 22, 1985, to the Attorney General, you have asked the opinion of our Office on two (2) issues currently confronting the Department of Mental Health. First, you have inquired whether §44-23-1090, South Carolina Code of Laws, 1976, as amended, authorizes the release of information and records on patients and ex-patients of the South Carolina Department of Mental Health to law enforcement authorities from states other than South Carolina. Section 44-23-1090 makes such records and information confidential and not subject to disclosure except under certain exceptional circumstances. One of the circumstances as set forth in §44-23-1090(5) is where "disclosure is necessary in cooperating with law enforcement agencies" (emphasis added). You indicate in your letter that this information is routinely provided to South Carolina law enforcement authorities upon request pursuant to this section. I find no reason to limit this provision to South Carolina law enforcement agencies only. The term "law enforcement agencies" is not defined in the article and, therefore, must be given its common usage. Absent any limiting modifiers such as South Carolina or state, the term "law enforcement agencies" would include any agency performing the function of law enforcement whether from South Carolina or some other state.

Secondly, you have inquired whether the South Carolina Department of Mental Health can assess fees when personnel of the Department are subpoenaed for court testimony or for depositions. As pointed out in your letter, §19-19-40, South Carolina Code of Laws, 1976, as amended, prohibits a public employee from receiving such fees. In a previous opinion, a copy of which is enclosed, this Office has concluded, based on the authority of §19-19-40, that the receipt and retention of witness fees and allowances by a salaried state employee, incidental to the performance of his official duties,

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constitutes a prohibited perquisite of the office and that a state agency is entitled to insist that any of its employees who are paid such fees pay them over to the agency to be remitted to the General Fund. See April 12, 1984, Opinion of the Attorney General written by T. Travis Medlock, Attorney General. Whether the Department, rather than the individual, can assess such fees is a separate question. The right of a witness to compensation is purely statutory. At common law, no witness fees were paid, as it was thought that, justice being a source of mutual benefit to all the members of the community, each member was under an obligation to aid in furthering it as a matter of public duty. 81 Am.Jur.2d Witnesses §23, p. 47. I can find no statutory authority or court rule which allows the Department of Mental Health to assess witness fees. It is my conclusion, then, that such fees cannot be assessed without such statutory authorization.

Sincerely,

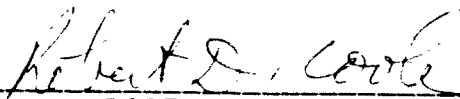


B. J. Willoughby  
Assistant Attorney General

BJW/rho

Enclosure

REVIEWED AND APPROVED:



ROBERT D. COOK

Executive Assistant for Opinions