

✓ FOLLOW UP BY 104

Library 1736

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-8667

September 23, 1985

Honorable Harry E. Dawkins
Orangeburg County Judge of Probate
P. O. Box 1000
Orangeburg, SC 29116-1000

Dear Judge Dawkins:

Your letter of July 15, 1985, requesting the opinion of this Office has been referred to me for response. In your letter, you ask whether it is mandatory under §14-23-1130, South Carolina Code of Laws, 1976, as amended, for County Council to pay for the cost of a certified court reporter in contested matters before the Probate Court.

In general terms, §14-23-1130 requires the governing body of each county to provide certain books, office equipment, office space, and support personnel to the Probate Court. More specifically, and with regard to support personnel, §14-23-1130 provides in pertinent part:

"... The governing body of each county shall provide office space and additional support personnel necessary for the orderly conduct of the business of the Probate Court." (Emphasis added.)

The statute leaves unclear who has the authority to determine what is meant by "necessary for the orderly conduct of the business of the Probate Court." The possibilities which come to mind are the governing body of the county, the Probate Judge, or the Chief Justice of the State Supreme Court. The reason for considering the first two possibilities as the ultimate authority in this determination is self-evident. The Chief Justice, however, is more likely the proper choice. Article V, Section 4 of the South Carolina Constitution makes the Chief Justice of the Supreme Court the administrative head of the unified judicial system and bestows upon him the power to make rules governing the administration of all the courts of the State. In State ex rel. McLeod v. Court of Probate, 266 S.C. 279, 233 S.E.2d 166 (1975), the Probate Courts were recognized as a part of the unified judicial system.

REQUEST LETTER

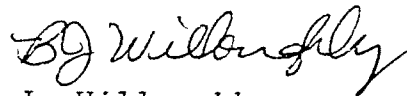
Honorable Harry E. Dawkins
Page 2
September 23, 1985

Therefore, the Chief Justice has the authority to make rules governing the practice and procedure in the Probate Courts. Rules have been promulgated for court reporters for the Family Courts and the Circuit Courts requiring certification; however, at this time, no rule exists requiring certified court reporters for use by the Probate Courts. 1/ Therefore, it appears that the necessity for certified court reporters in contested matters in the Probate Courts is not recognized. For this reason, and absent a legal action being brought to require the County Council to pay for a certified court reporter, it is difficult to place that burden on County Council solely based on the language of §14-23-1130.

The question then remains as to how to provide a record of contested matters where the Probate Court determines such a record is needed. This determination must be made on a case by case basis. Since a certified court reporter is not required, it is acceptable to use a standard tape recorder to record the proceedings. The recording can then be made available for use by the attorney who desires to appeal the decision of the Probate Court. In the alternative, the Probate Court may require the attorney for the moving party to post bond or cash to cover the cost of a court reporter and then assess actual cost at the conclusion of the proceeding, depending upon the outcome. These suggestions are merely for your consideration and not required or recommended.

I hope this information sufficiently answers your inquiry.

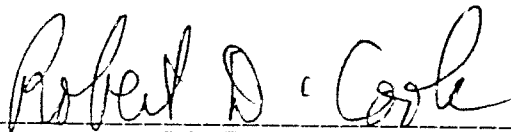
Sincerely,



B. J. Willoughby
Assistant Attorney General

BJW/rho

REVIEWED AND APPROVED:



ROBERT D. COOK

Executive Assistant for Opinions

1/ It should be noted that the judicial commitment fund is available through Court Administration to pay for a recorder for contested judicial commitment matters, but even in this situation, a certified reporter is not required.