

1981 WL 157890 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 30, 1981

*1 Honorable John R. T. Major
Clerk of Court
Post Office Box 1781
Columbia, South Carolina 29202

Dear Mr. Major:

You have requested an opinion of this Office concerning provisions of recent legislation, bearing ratification number R148, which establishes a community corrections plan for probationers and parolees. You particularly asked the following questions concerning the funding provisions of such legislation:

- (1) Does the provision in Section 24-23-210 providing for an assessment of twenty dollars when any individual is convicted, pleads guilty or nolo contendere, or forfeits bond to a General Sessions Court offense apply to any and all convictions, pleas, or bond forfeitures regardless of the sentence received, i.e., whether a sentence of a fine or a term of imprisonment?
- (2) Is the assessment referenced in Question 1 imposed per court appearance or per criminal offense?
- (3) To which office are the assessments collected by magistrates and municipal court judges forwarded?
- (4) What construction should be given the phrase 'any judge of competent jurisdiction' included in Section 24-23-210 as it relates to the authority to suspend an assessment imposed upon a defendant?

In reviewing the pertinent provisions of the referenced legislation, it is imperative that there be compliance with the rules of statutory construction. The South Carolina Supreme Court has held that:

(t)he first rule of construction in the interpretation of statutes is that of intention on the part of the legislature and where the terms of a statute are clear and not ambiguous, there is no room for construction, and courts must apply them according to their literal meaning . . . There is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states. [Jones v. South Carolina State Highway Department, 247 S.C. 132 at 136, 146 S.E. 2d 166 \(1966\)](#).

As to your first question, in the opinion of this Office, the twenty dollar assessment imposed for General Sessions offenses applies to all convictions, pleas, or bond forfeitures regardless of the actual sentence imposed. It would apply equally to situations in which a sentence of imprisonment is imposed as well as to those situations where a fine is imposed. The referenced section should not be construed to be limited to those sentences in which only a fine is imposed. While the referenced assessment does apply to all convictions, pleas, or bond forfeitures regardless of the actual sentence imposed, it should be noted that a judge is authorized to suspend the imposition of all or part of any such assessment. It is specifically provided that:
. . . any judge of competent jurisdiction may suspend imposition of all or part of the assessments made under this section upon finding that such a requirement would place severe financial hardship upon the offender or his family.

In response to your second question, it is the opinion of this office that the referenced twenty dollar assessment is to be imposed based upon the number of offenses to which a defendant pleads, is found guilty, or forfeits bond. When a defendant is charged

in a multi-count indictment, the assessment should be computed based upon the number of indictments to which an individual pleads, is found guilty, forfeits bond.

*2 Section 24-23-210(B) should not be construed as providing that the referenced assessment is to be imposed per court appearance.

As to your third question concerning to which office the assessments imposed by a magistrate or municipal court judge are forwarded, please be advised that included in the State Appropriations Act enacted by the General Assembly and awaiting the signature of the Governor is a provision which states:

Assessments collected by municipal and magistrate's courts shall be paid monthly to the county treasurer in the county where the court is located. The county treasurer, after duly noting and recording the receipt of such payments, shall transfer those funds to the State Treasurer who shall deposit them in the State's general fund. One-half of these funds shall be appropriated to the Department for the express purpose of developing and operating community corrections programs. The remainder of the funds shall be utilized as the Legislature shall direct, with priority being given to such victim assistance programs as may be enacted.

Therefore pursuant to such provision, the assessments imposed by magistrates and municipal court judges are forwarded to the treasurer's office of their respective counties.

Your remaining question concerns what construction should be given to the phrase 'any judge of competent jurisdiction' included in Section 24-23-210 which provides for the suspension of all or part of the assessments imposed on an individual convicted of a General Sessions Court offense when the requirement to pay such an assessment would place severe financial hardship upon the offender or his family. In the opinion of this Office, such phrase, 'any judge of competent jurisdiction' should be construed so as to permit the suspension of all or any part of the assessment imposed upon a defendant only by the judge presiding during the term of General Sessions Court in which the assessment was imposed. Such an interpretation is consistent with prior holdings of the South Carolina Supreme Court that a court is without jurisdiction to alter, amend, or modify a sentence imposed upon a criminal defendant after the expiration of the term of court at which the sentence is imposed. See: [State v. Best](#), 257 S.C. 361, 186 S.E.2d 272 (1972); [State v. Walker](#), 269 S.C. 349, 237 S.E.2d 583 (1976).

Presumably, in imposing any assessment upon a defendant, the judge would in necessary circumstances, such as inability to pay an entire assessment at one time, establish a schedule in which payments on such an assessment could be made. Such would be similar to the schedule for payment of a fine by an indigent as provided for by [Section 17-25-350, Code of Laws of South Carolina](#), 1976. While in the opinion of this Office, suspension of all or part of an assessment could only be ordered by the judge presiding during the term of General Sessions Court in which the assessment was imposed, it is the further opinion of this Office that the referenced schedule for payment of an assessment could be modified upon a proper showing so as to permit an extension of time to pay a previously imposed assessment.

*3 If there are any questions concerning the above, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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