

1982 WL 189432 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 20, 1982

*1 The Honorable Patsy S. Stone
Judge of Probate
Florence County
Post Office Box 965
Florence, South Carolina 29501

Dear Judge Stone:

You have asked this office for its opinion whether § 8-21-770(b)(3) or § 21-15-1030, South Carolina Code of Laws, 1976, as amended, by 1979 Acts and Joint Resolutions, governs fees to be charged by the probate court when the court sells real estate in aid of deficient assets. It is the opinion of this office that both statutes are applicable and the fees charged should be pursuant to both.

The General Assembly promulgated § 8-21-770, effective July 1, 1979. Subpart (b)(3) thereof provides:

(b) Except as otherwise provided, the following fees and costs shall be collected by the Probate Courts and deposited in the general fund of the counties:

(3) Sale in aid of deficient assets \$15.00.

Article 7 of Title 21 of the South Carolina Code, 1976, as amended, provides the only procedure whereby the probate court may sell real property in aid of assets in the administration of a decedent's estate. Thus, it would appear that § 8-21-770(b)(3) was intended by the General Assembly to apply to sales of real estate under Article 7 of Title 21.

Section 21-15-1030, which is a part of Article 7 provides:

The probate court shall receive for its services required by this article, out of the proceeds of the sale of the real estate of the deceased and disburse to the general fund of the county in which it is located, five percent of the first one thousand dollars or less actually realized and three percent on all over that amount actually realized; provided, however, that such total shall not exceed one thousand dollars.

This statutory provision became effective on August 21, 1979 and it must be accepted that the General Assembly was cognizant of § 8-21-770(b)(3) which was promulgated during the same legislative session and preceded the enactment of amended § 21-15-1030 by approximately two (2) months only. [Bell v. S.C. State Highway Dept., 204 S.C. 462, 30 S.E.2d 65](#). There being no provision repealing § 8-21-770(b)(3), it must be presumed as well that the legislature intended both provisions to be of full force and effect. [Bell, supra](#). Further, there is no apparent conflict in the application of both provisions.

Accordingly, it appears that when real property is sold pursuant to Article 7 Title 21 of the Code in aid of assets, a fee of fifteen (\$15.00) dollars is required upon receipt of the application by the court. In addition, when the sale is consummated, the appropriate percentage of the proceeds must be charged as court fees pursuant to § 21-15-1030. All fees collected pursuant to these provisions must be disbursed to the general fund of the County.

With best wishes, I remain

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

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