

1980 WL 121181 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1980

\*1 William A. Little, Esquire  
Law Offices of Dusenbury, Hendrix & Little  
Post Office Box 156  
Myrtle Beach, South Carolina 29577

Dear Mr. Little:

You have asked this Office to reconsider its Opinion of March 21, 1980 (attached) concerning fees of the probate court.

I understand your position to be as follows: If the court appointed fiduciaries before July 1, 1979, and you paid fees for certain services before July 1, 1979, then you should be charged for all other services, even those rendered after July 1, under the old fee schedule (§ 14-23-810, Code of Laws of South Carolina, 1976). You point to the first paragraph of Section 8-21-770, the new fee schedule, for support. The first sentence of this paragraph says: 'Fees and costs are payable at the date of appointment of the fiduciaries'. Section 8-21-770, Code of Laws of South Carolina, Cum. Supp., 1979. You say that because the fiduciaries had already been appointed before July 1, 1979, it would be 'impossible' to apply the new fee schedule to the estate.

This Office does not agree. The above-quoted sentence must be looked at in the context of the act that set up the new schedule—Act 164 of the 1979 Acts. The Act was meant to repeal the old fee schedule and to apply immediately to cases pending on July 1, 1979. See Opinion Letter of March 21, 1980 and Opinion Letter of February 7, 1980 (attached).

The quoted sentence does not negate the intent of the Act. It does not make payment of fees 'impossible' merely because fiduciaries had already been appointed; at most it only makes such payment 'past due' as of July 1.

Thus this Office must reiterate the Opinions of March 21 and February 7. The court could however set off any fees already paid before July 1 against the fees required by the new schedule.

Sincerely,

Edwin E. Evans  
Assistant Attorney General

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