

1980 WL 120729 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 19, 1980

*1 W. Edward Mullineaux, Esquire
Staff Attorney
S. C. Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Ed:

In a letter to this Office you posed numerous questions that have been raised since the enactment of Act No. 164 of 1979 [61 STAT. 311 (1979)] as to clerks of court and registers of mesne conveyances. The majority of such questions dealt with the proper fees to be charged by such officials pursuant to [Section 8-21-310, Code of Laws of South Carolina](#), 1976, as amended. In responding to your questions concerning what fees may be charged, I am simply stating for the most part the interpretation by this Office of what we consider to be the appropriate subsection of [Section 8-21-310](#), to make reference to in determining the fee for a particular act. If there is any need for a detailed discussion as to why it appears a particular fee is appropriate, please advise.

As to the proper fee for

1. filing a mechanics lien—subsection (9);
2. filing a partial release of a mortgage—subsection (3);
3. filing a transcript of judgment from another county—no charge (There is no specific provision for such in the section. However, subsection (11)(c) does provide the fee for transcripts of judgment from magistrates' courts and federal district courts.);
4. filing a lis pendens which is accompanied by a summons and complaint—fifteen (\$15.00) dollars as provided by subsection (11)(a);
5. filing a confession of judgment—subsection (11)(a) (no charge);
6. filing a change of name petition—[Section 15-49-30, Code of Laws of South Carolina](#), 1976, provides a five (\$5.00) dollar filing fee. It does not appear that the fifteen (\$15.00) dollar fee provided by [Section 8-21-310\(11\)\(a\)](#) is applicable inasmuch as such section states in its preliminary paragraph, '(e)xcept as otherwise expressly provided.' Therefore the express five (\$5.00) dollar fee should control;
7. transfer of property to probate court or vice versa—subsection (9);
8. filing appeals in civil matters from agencies, probate courts, arbitration panels, magistrates, etc.—fifteen (\$15.00) dollars as provided by subsection (11)(a);
9. assuring an exemplification of records—subsection (17);
10. filing of arbitration cases—fifteen (\$15.00) dollars as provided by subsection (11)(a);

11. filing of mental health liens—subsection (9);
12. filing of partnership agreements—subsection (15);
13. filing of articles of association—subsection (15);
14. filing of a satisfaction of judgment—subsection (11)(a) which provides for no charge.

As to your question of what [Section 8-21-310\(17\)](#) covers, it appears that the fee of one (\$1.00) dollar permitted by such subsection should be charged for any document true copied and certified.

As to your question of whether an additional fee is permitted pursuant to [Section 8-21-310\(6\)](#) for filing an Affidavit for Title to Real Estate which accompanies a deed to be recorded, please be advised that if such Affidavit is simultaneously presented along with the deed, no fee should be charged in addition to the fee permitted by [Section 8-21-310\(1\)](#) for recording a deed. However, if such Affidavit is presented separately, [Section 8-21-310\(6\)](#) which permits a two (\$2.00) dollar fee should control.

*2 As to your question concerning whether the ‘copying’ referenced in [Section 8-21-310\(7\)](#) applies to a plat already on record, a copy of which is requested, or to new plats presented for recording, or both, it appears that such subsection should be interpreted to provide the fee for ‘copying and recording’ a new plat presented for recording. It should not be interpreted as providing the fee to be charged for copies of previously recorded plats.

As to your question concerning whether there is a fee for recording an assignment when the assignment is recorded at the same time as a mortgage dealing with the same transaction, [Section 8-21-310\(3\)](#) provides no fee shall be charged for such simultaneous recording.

Concerning your question as to whether [Section 8-21-310\(5\)](#) covers recording fees for releases of mortgages and subordination of mortgages, in the opinion of this Office, [Section 8-21-310\(3\)](#) which provides a fee for recording a ‘written instrument affecting title to property or lien for the payment of money’ should be considered as providing the appropriate fee. As to your remaining question concerning the fee for recording satisfactions not on the original mortgage, [Section 8-21-310\(5\)](#) providing a two (\$2.00) dollar fee should be construed as controlling.

As to your question concerning whether the fee provided by [Section 8-21-310\(10\)](#) includes the fifty (50¢) cent documentary stamp fee, in the opinion of this Office, any fees for documentary stamps are totally separate and should not be considered as being included in the fee permitted by [Section 8-21-310\(10\)](#).

Concerning your question as to whether the fee in [Section 8-21-310\(11\)](#) should be charged for filing a summons, complaint not served, in the opinion of this Office, the fee provided by such subsection is not required to be paid until the complaint is filed. There is no provision specifically requiring a fee to be paid at the time the summons is filed.

In a separate question you asked whether [Section 8-21-310\(17\)](#) requires a fee to be paid for attesting copies and signing subpoenas. In the opinion of this Office, the phraseology ‘issuing an official certificate under seal of court’ requires payment of a fee for attesting copies but not for signing subpoenas.

You have also asked whether [Sections 8-21-310\(13\) and \(14\)](#) apply to both civil and criminal cases. In the opinion of this Office, [Section 8-21-310\(13\)](#) applies to bail for both civil and criminal defendants. However, [Section 8-21-310\(14\)](#) is applicable only to civil proceedings.

As to your question whether [Section 8-21-310\(14\)](#) which states in part:

'(f)or taking and filing bond or security costs, one dollar . . .'

should be read as 'for taking and filing bond or security for costs', in the opinion of this Office, the inclusion of the word 'for' would appear to be appropriate. I am unaware of any requirement for 'security costs' and therefore it appears that the omission of the word 'for' was an oversight.

*3 Concerning [Section 8-21-310\(13\)](#), you have asked as to a situation where the one (\$1.00) dollar fee permitted is paid for filing a bond and later the surety is justified, should the dollar paid be subtracted from the five (\$5.00) dollar fee. Such subsection simply states:

'(f)or taking and filing an order for bail with or without bond, one dollar; with bond when surety must be justified, five dollars;'

As you can see there is no provision indicating that the one dollar fee should be deducted. Therefore, it appears that five (\$5.00) dollars would be the proper filing fee when the surety is later justified.

[Section 8-21-310\(15\)](#) states that a two (\$2.00) dollar fee is required to be paid 'for filing or recording any commission of notary public or other public office . . .' You have asked whether the phrase 'other public office' includes county councils and boards they commission, all elected officials, appointments by the Governor, Deputy Sheriffs, and Constables. In the opinion of this Office, the two dollar fee provided must be paid for filing and recording the commission of any officeholder who comes within the general definition of 'public officer.' [Section 8-1-10, Code of Laws of South Carolina](#), 1976, defines 'public officers' as '. . . all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.'

Such term has been further defined to include those individuals

'. . . charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which are continuing and not occasional or intermittent . . .' [Sanders v. Belue](#), 78 S.C. 171 at 174, 58 S.E. 762 (1907).

As to the those individuals referenced by you in your question, it appears that they would be included in the term 'public officer' and thus would have to pay the two dollar fee when filing their commissions with the clerk of court's office.

You also asked whether the fee provided by [Section 8-21-310\(1\)](#) for recording a deed or mortgage includes the auditor's fee charged in some counties. You further asked whether it is proper for a county to charge an additional fee for the auditor? In the opinion of this Office the fee provided by [Section 8-21-310\(1\)](#) for recording a deed or mortgage is simply the fee for recording and should not be considered as encompassing any other fee, such as a fee for an auditor's office. It is specifically provided by [Section 8-21-130, Code of Laws of South Carolina](#), 1976 that:

'(i)n every entry and endorsement on any deed of conveyance of real property recorded in his office, each county auditor shall receive a fee of twenty-five cents.'

This is a totally separate fee from that received for recording an instrument.

As to whether it is proper for a county to charge an additional fee for the auditor, I am unaware of any statutory authority which would permit a county to require certain fees be collected by an auditor and therefore, only those fees provided by state statute may be charged. Generally, neither the county council nor the auditor himself has the authority to alter, expand, or diminish the powers of the office of county auditor except as specifically authorized by statute. Furthermore, a review of Act. No. 283 of 1975, the 'home rule' legislation, does not appear to provide authority for either an auditor or a county council to require that additional fees be collected by a county auditor.

*4 In another question you asked whether [Section 8-21-310\(8\)](#) requires recording foreclosure of partition decrees in mortgage or deed books or can these decrees merely be filed in the judgment roll and a fee charged pursuant to [Section 8-21-310\(9\)](#). Generally, foreclosure of partition decrees are filed in the judgment roll. Pursuant to [Section 8-21-310\(11\)\(a\)](#) no fee should be charged for such filing. Therefore, as to whether a fee would be charged pursuant to [Section 8-21-310\(9\)](#), it appears such section is inapplicable to filing foreclosure of partition decrees in a judgment roll. As to whether [Section 8-21-310\(8\)](#) requires recording such decrees in mortgage or deed books, there is no requirement that such decrees be recorded in deed books or mortgage books. However, if it is desired that such decrees be recorded in deed books or mortgage books, the fee permitted by [Section 8-21-310\(8\)](#) should be collected.

In a separate question you asked whether every fee covered by [Section 8-21-310](#) is to be distributed twenty-five (25%) per cent to the State and seventy-five (75%) per cent to the county. [Section 14-21-490, Code of Laws of South Carolina, 1976](#), as amended, provides:

‘(e)xcept for those drug fines and forfeitures remitted to the Department of Mental Health as provided in Section 44-53-580, and except for those fines and forfeitures for game or fish law violations used for the purposes enumerated in Section 50-1-150 and [Section 50-1-170 of the 1976 Code](#), on July 1, 1977, three-fourths of all costs, fees, fines, penalties, forfeitures and other revenues generated by the circuit courts and the family courts established by this act shall be paid over to the county in which the proceeding is instituted and one-fourth of such revenues shall be remitted to the State for use in deferring the costs of the unified court system. The provisions of this section shall specifically not apply to any fine, penalty, forfeiture or other revenue generated in the magistrates’ or municipal courts of this State.’

In the opinion of this Office, the above provision which mandates the proportioning of certain monies is applicable to all costs, fees, fines, penalties, forfeitures or other revenues generated pursuant to [Section 8-21-310\(11\)\(a\)](#) but does not include those recording and filing fees otherwise provided by [Section 8-21-310](#).

You have also asked whether county governing bodies may impose fees to be collected by the clerks of court and registers of mesne conveyances above those fees provided by [Section 8-21-310](#) or for items not covered by such section. This Office in a prior opinion, a letter from Assistant Attorney General Eugene Yates, III, dated February 7, 1980, which cited 1977 Ops. Att’y Gen. No. 77-130 at p. 110, a copy of which is enclosed, indicated that as to those fees provided for probate courts by [Section 8-21-770, Code of Laws of South Carolina, 1976](#), as amended, only those fees permitted by the schedule provided in such section could be charged by the probate courts. Thus as to fees to be collected by clerks of court and registers of mesne conveyances, any fees additional to those permitted by [Section 8-21-310](#) and any fees for items not covered by such provision are improper and may not be collected. Of course, counties could require that fees be collected for such services as copying which require the use of equipment maintained by a county for use by the clerk of court or register of mesne conveyances.

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

Sincerely,

Charles H. Richardson
Assistant Attorney General

1980 WL 120729 (S.C.A.G.)