

1979 WL 42943 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 18, 1979

*1 Mr. James Robert Martin
Union County Councilman
Route 2
Box 270
Union, South Carolina 29379

Dear Mr. Martin:

In a recent letter to this Office, you questioned whether the Union County Council could require that fees now received by Union County Magistrates and the Union County Sheriff's Department be paid to Union County. Please be advised that all fees and costs collected by the Sheriff's Department in Union County are presently being turned over to the County. 58 STAT. Act No. 785 at 1561 (1973). The only fees received by the Sheriff are the fees received by serving as Constable for the Magistrate at the Union County Courthouse. The aforementioned Act expressly states that '... the Sheriff as constable for the Magistrate at Union County Courthouse, shall likewise be allowed to retain his costs and fees as a part of his compensation.' I have been informed that by serving as constable for the Magistrate at the courthouse the Sheriff serves substantially all legal process in the County.

As to your question of whether magistrates may retain fees collected by them for performing any judicial Act, a previous opinion of this Office, a copy of which is attached, stated:

The State Supreme Court has clearly held that South Carolina magistrates may no longer constitutionally retain as their compensation any fee charged by them for the performance of judicial acts. State of South Carolina ex rel. McLeod vs. Crowe, . . . See also, Ward v. Monroeville, 409 U.S. 57, 34 L.Ed.2d 267 (1972). In our view, all fees collected by magistrates on and after November 13, 1978, the date of the Crowe decision, for the performance of judicial acts are to be transmitted by them to their respective county treasurers and not to the State Treasurer since magistrates have traditionally been regarded in South Carolina as 'county officers' and because statutes which have heretofore abolished magisterial fee systems have expressly provided that the fees collected by magistrates are to belong to the particular county. See, e.g., 56 STAT. Act No. 1246 § 6 at 2654 (1970); cf., 20 C.J.S. Counties § 112 at 919 (1950).

As to your question as to whether the County Council could require that the magistrates' constables, including the Sheriff in his capacity as constable, deposit with the County the fees received by them for the duties performed as constables, please be advised that a previous opinion of this Office indicated that '... the County Council is the governing body of a political subdivision of this State and, as such, possesses only those powers which are either expressly granted or necessarily implied.' 1975 Op. Att'y Gen. No. 4216, p. 259. This opinion indicated that, inasmuch as there was no statutory language which either expressly or impliedly granted to a particular County Council the authority to require the Sheriff to turn his fees over to the County General Fund, the Sheriff could retain those fees which he was permitted by general law to charge. I am unaware of any statutory language which would permit the Union County Council to require that the magistrates' constables and specifically the Sheriff as constable, deposit the fees lawfully collected by them with the County. However, please be advised that, pursuant to a current bill before the Legislature, S. 402, magistrates' constables would be required to pay into the general fund of a county all fees and costs received by them. It is my impression that such bill has a very good chance of being enacted as presently written. Therefore, when such bill is enacted, all magistrates' constables' fees and costs would be paid into the county fund.

*2 Hopefully, the above is in complete response to your inquiry.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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