

1989 WL 508587 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 25, 1989

\*1 Motte L. Talley  
South Carolina Court Administration  
Post Office Box 50447  
Columbia, South Carolina 29250

Dear Motte:

In a letter to this Office you questioned whether any priority should be given the collection and transmittal of the funds designated for the State Office of Victim Assistance when scheduled time payments or other arrangements prevent the immediate collection of the total fine and assessments. You particularly referenced the amount going to the Victim's Compensation Fund pursuant to Section 56-5-2940 of the Code which states that as to a defendant convicted of driving under the influence, he shall be punished:

... (b) by a fine of not less than two thousand dollars nor more than five thousand dollars and imprisonment for not less than 48 hours nor more than one year for the second offense. However, the fine imposed by this item may not be suspended in any amount less than one thousand dollars, and of that amount two hundred fifty dollars must be remitted to the Victim's Compensation Fund....

You have questioned whether any statutory authority exists for assigning the collection and distribution of the portion of the fine designated for the Victim's Compensation Fund priority over the collection and transmittal of the various assessments and the remainder of the fine collected for a second offense driving under the influence conviction pursuant to a scheduled payment.

Based upon my review I am unaware of any statutory authority specifically providing for priority for that portion of a fine designated to the Victim's Compensation Fund in the situation you addressed. Typically, a court is considered as having such inherent powers "... as are essential to the existence of the court and necessary to the orderly and efficient exercise of its jurisdiction." 20 Am.Jur.2d, Courts, Section 78, p. 440. While such a conclusion would certainly be reasonable, our courts have never held whether the authority to prioritize the manner of distribution of moneys received in payment of a fine would fall within the courts' inherent powers. That being the case, to avoid any uncertainty, legislation should be considered which would expressly provide for priority for payments to the Victim's Compensation Fund if such is desired.

With best wishes, I am  
Very truly yours,

Charles H. Richardson  
Assistant Attorney General

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