

1979 WL 43553 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 31, 1979

*1 John C. Patrick, III, Esquire
Staff Attorney
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear John:

In a letter to this Office you raised several questions concerning provisions of the recently enacted Judicial Adjustment Act (R238, S402 (1979)) involving the collection of fees as to civil actions in magistrate's court.

In your first question, you asked should a magistrate collect, pursuant to Section 8-21-1060 of the Act, five (\$5.00) dollars plus mileage for each paper served in a civil action or for the service of all papers, a total of five (\$5.00) dollars plus mileage. You referenced, for example, that in a claim and delivery action the defendant is initially served with a summons, a notice of a right to a preseizure hearing, a copy of the plaintiff's affidavit, and a copy of the plaintiff's bond undertaking. Please be advised that in the opinion of this Office, based on a review of Section 8-21-1060, a single charge of five (\$5.00) dollars plus mileage is to be collected for the service of all papers concerning a particular civil action when the service of such papers is accomplished at a single time.

You also stated that in some civil actions after an action has been commenced additional papers must be served at an additional time, such as the service of a warrant of ejection ten (10) days after the service of a rule to show cause on a defendant in a landlord-tenant dispute who fails to appear pursuant to such rule. Therefore, in your second question you asked whether on those occasions when it is necessary to serve additional papers after the service of a summons or rule, should the magistrate collect pursuant to Section 8-21-1060 an additional five (\$5.00) dollars plus mileage or does the five (\$5.00) dollars previously collected for service of the summons or rule cover the additional service? Please be advised that in the opinion of this Office, an additional five (\$5.00) dollars plus mileage costs should be collected to cover the additional service inasmuch as an additional act of serving such papers is required.

You also referenced the fact that comparing subsections (6) and (9) of Section 8-21-1010, it appears that fees and costs collected by a magistrate for handling a landlord/tenant action are distinguished from the fees and costs collected by a magistrate in civil actions generally. With reference to such, in your third question you asked whether the five (\$5.00) dollar fee provided for in Section 8-21-1010(9) is inclusive of all service of process costs, i.e., are service fees and costs under Section 8-21-1060 inapplicable to landlord-tenant matters. Please be advised that in the opinion of this Office, the service fees and costs provided by Section 8-21-1060 are also applicable to landlord-tenant matters with the result that in addition to the fees and costs provided by Section 8-21-1010, magistrates should collect those service of process costs provided by Section 8-21-1060(4) which concern civil actions generally. Furthermore, in response to your question four, in which you asked whether the answer to question two would be affected if the proceeding involved was a landlord-tenant matter, it would appear that the response would be the same for a landlord-tenant inasmuch as service charges plus mileage costs should be charged in a landlord-tenant action.

*2 In your last question raised, you asked whether a magistrate may generally, with or without reference to a local law provision, refuse to charge or collect the fees and costs provided by the referenced Judicial Adjustment Act? You indicated that the matter of relief of indigents from the payment of any fees is not included in your request.

Section 8-21-1060 of such Act states in part:

‘except as otherwise expressly provided, the following fees and costs shall be collected by the magistrate or his officers and deposited in the general fund of the county. . . .’ (emphasis added)

Section 8-21-1010 states in part:

‘except as otherwise expressly provided, the following fees and costs shall be collected by the magistrates and deposited in the general fund of the county’ (emphasis added)

It is generally held that:

‘. . . the use of the word ‘shall’ in a statute carries with it the presumption that it is used in the imperative rather than in the directory sense. But this is not a conclusive presumption. Both the character and context of the legislative and controlling’ Sands, Sutherland Statutory Construction, (4th Ed.), Vol. 2A, Section 27.03, p. 416.

With reference to such, in the opinion of this Office, a construction of those portions of the Act relating to magisterial fees and costs in their entirety results in the conclusion that magistrates are directed to charge those fees and costs provided by the Act. As to any local law provisions which may be in conflict with such finding, my research has not revealed any specific local law which directs that any particular magistrate is not to charge fees. In a conversation you also stated that you were unaware of any specific local law which directs that certain magistrates are not to charge fees. As to any such local law provisions which may exist, there may be some question as to whether the above determination by this Office that magistrates may not refuse to charge those fees provided by the Judicial Adjustment Act is conclusive as to a relevant local law provision directing otherwise inasmuch as this Office in a prior opinion held that:

‘statutes covering a particular and special subject should not be considered repealed by any general statutes on the same subject, except where intention of the Legislature was very clear and definite that such repeal was intended.’ 1957 Op. Attorney General, p. 294.

I would appreciate your bringing to my attention any such local laws that come to your attention for further review.

If there are any further questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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