

1978 S.C. Op. Atty. Gen. 140 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-110, 1978 WL 22579

Office of the Attorney General

State of South Carolina

Opinion No. 78-110

June 7, 1978

***1 SUBJECT: Indigents, Reimbursement**

Certain municipal courts may order a convicted indigent defendant to reimburse the Judicial Department for the costs of his representation by a public defender.

TO: Mr. Neal Forney
Assistant Director
S. C. Court Administration

QUESTION:

Does a municipal court have the authority to order a convicted defendant to reimburse the public defender fund of the city as a condition of a suspended sentence in cases where the defendant has been represented by a court-appointed public defender?

AUTHORITIES INVOLVED:

[Section 14-25-810, 1976 South Carolina Code of Laws](#), as amended.

[Section 14-25-980, 1976 South Carolina Code of Laws](#), as amended.

[Section 14-25-990, 1976 South Carolina Code of Laws](#), as amended.

[Section 17-3-10, 1976 South Carolina Code of Laws](#), as amended.

[Section 17-3-30, 1976 South Carolina Code of Laws](#), as amended.

[Section 17-3-40, 1976 South Carolina Code of Laws](#), as amended.

[Section 17-3-50, 1976 South Carolina Code of Laws](#), as amended.

[Section 17-3-60, 1976 South Carolina Code of Laws](#), as amended.

[Section 17-3-80, 1976 South Carolina Code of Laws](#), as amended.

[Fuller v. Oregon](#), 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974).

[State v. Miller](#), 111 Ariz. 558, 535 P.2d 15 (1975).

[Haynes v. State](#), 26 Md. App. 43, 337 A.2d 130 (1975).

79 A.L.R.3d at 1037.

79 A.L.R.3d at 1040.

DISCUSSION:

You have requested an opinion from this Office as to whether a municipal court has the authority to order a convicted defendant to reimburse the public defender fund of the city as a condition of a suspended sentence in cases where the defendant has been represented by a court-appointed public defender.

State law grants to certain municipal courts and recorders the authority to ‘suspend sentences imposed by them in such cases as come within their jurisdiction upon such terms as in their discretion may seem fit and proper.’ See, [Sections 14–25–810, 14–25–980, 14–25–990](#).

[Sections 17–3–10, et seq.](#) of the 1976 Code of Laws of South Carolina, as amended, (subsequently referred to as the Defense of Indigents Act) provides for the defense of indigents in this State. [Section 17–3–60](#) describes the procedures for establishing public defender systems in the counties. [Section 17–3–40](#) provides for the creation of a claim against the assets and estate of the person for whom counsel is appointed. Under Subsection (a), the claim is determined by the amount of the costs of representation determined pursuant to [Sections 17–3–50](#) (fees for appointed counsel and public defenders) and [17–3–80](#) (necessary expenses incurred by appointed counsel and public defenders in the representation of the indigent defendant) less the amount paid by the defendant to the Judicial Department, pursuant to [Section 17–3–30](#) (payment of indigent defendant's assets to the Judicial Department when those assets are insufficient to employ private counsel). Subsection (b) of [Section 17–3–40](#) states that the court, in its discretion, may reduce to judgment part or all of the claim, and Subsection (d) states that the Judicial Department shall administer this section and that ‘all monies collected hereunder shall be paid over to the Judicial Department.’ There is no apparent prohibition against municipal courts ordering payments by indigent defendants, and there appears to be no prohibition against municipal courts ordering reimbursement as a condition of a suspended sentence. However, payment must be made to the Judicial Department in accordance with Subsection (d).

*2 Although there is no case on point in this State, courts in other states have allowed as [conditions of probations or suspended sentences requirements that indigent defendants reimburse the government for their defense costs](#). See, [79 A.L.R.3d 1025](#). A court's authority to require reimbursement appears to depend largely upon the appropriate state statutes. The United States Supreme Court upheld Oregon statutes authorizing courts to condition probation of convicted persons on repayment of ‘expenses specially incurred by the State in prosecuting the defendant.’ [Fuller v. Oregon](#), [417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 \(1974\)](#). The ability of the indigent defendant to pay was, under the circumstances, ‘an essential element contributing to the validity of a probation condition which required the probationer to reimburse the government for [defense costs](#).’ See, [79 A.L.R.3d at 1037](#), and [Fuller v. Oregon, supra](#). The defendant's ability to pay also refers to situations in which repayment would impose a hardship on him and his family.

Another important element in these reimbursement cases is the ability of the probationer ‘to obtain reconsideration of the condition at any time with a view toward adjusting or remitting the unpaid balance if payment became a hardship.’ See [79 A.L.R.3d at 1040](#), and [Fuller v. Oregon, supra](#). This element supplements the first element of the defendant's ability to pay. The cases agree that the courts may not refuse probation to those indigent defendants who are unable to reimburse the government for their court-appointed counsel, but, for those defendants who are able to pay or who are expected to be in a position to pay at a later date, the courts may impose as a condition of their probation or suspended sentence the reimbursement for their court-appointed counsel.

However, a great deal depends upon the statutes. See [Fuller v. Oregon, supra](#), and [State v. Miller](#), [111 Ariz. 558, 535 P.2d 15 \(1975\)](#). See also [Haynes v. State](#), [26 Md. App. 43, 337 A.2d 130 \(1975\)](#) in which the court held that the authority

of the trial court to require as a condition of probation that appellant reimburse the State for counsel fees incurred in her defense was superseded by the public defender law.

CONCLUSION:

Since the Defense of Indigents Act, *supra*, does not prohibit the municipal court from ordering reimbursement as a condition of suspended sentences and since such orders are not generally unconstitutional or improper, it is the opinion of this Office that certain municipal courts may order as a condition of a suspended sentence, a convicted indigent defendant to reimburse the Judicial Department for the costs of his representation by a public defender, pursuant to [Section 17-3-40 of the Code](#) of Laws.

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