

1978 WL 35109 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1978

*1 Mr. Neal Forney
Assistant Director
South Carolina Court Administration
P. O. Box 11788
Columbia, S. C. 29211

Dear Mr. Forney:

You have inquired as to the construction to be given to Act R-521 of 1978. This Act in part amended [Section 23-23-70 of the 1976 Code](#) of Laws so as to require remittances to the Criminal Justice Academy and to the South Carolina Law Enforcement Hall of Fame Committee of certain amounts computed upon the basis of a scale of fines. The Act initially provides that 'every fine levied on a criminal or traffic violation in this State shall have a portion thereof designated, set apart, and used' for the support of the Criminal Justice Academy. The Act requires judicial officers receiving monies from fines or forfeitures to transmit the same to the appropriate fiscal authority, who is then required to 'make a computation on the basis of the scales of fines and forfeitures' set out in the Act and to forward the computed sum to the State Treasurer. This portion of the Act is essentially in accordance with the law as it previously existed.

In its final and concluding paragraph, the Act provides that the amounts set apart for training in law enforcement and for the Hall of Fame 'shall be added to and be levied above the fine or forfeiture imposed.' The Act is subject to varying interpretations, but the obvious intent as indicated in the final and controlling part of the Act is to add the designated amounts to the fines and forfeitures imposed and not to deduct them therefrom. Therefore, it is the opinion of this Office that the intent of the General Assembly so expressed should be given meaning and that the amounts specified in the Act should be added to the fines and forfeitures, and collected from the defendants by the judicial officers imposing fines or ordering forfeitures of bond.

Extensive research has been undertaken by this Office with regard to the problems presented by the Act and it cannot be said with confidence that the procedure set forth above is free from doubt. Among the questions presented are:

1. Whether the added amount is a part of the fine. In our opinion, it is not a part of the fine but is an amount levied above the fine or forfeitures, although its precise nature is not readily apparent. At least one court has held that such a charge in similar circumstances violated a constitutional provision of the State involved in that it constituted an improper imposition of court costs.
2. Whether the addition of this amount is a judicial or ministerial function. In our opinion, it is a ministerial function to be made by computation by the judicial officer imposing the additional amount.
3. What procedures are to be followed in connection with fines which are ordered to be paid upon the installment basis.
4. Whether the imposition of the charge affects the jurisdiction of magistrates where, for example, a \$200 fine may be imposed. In our opinion, it does not affect the jurisdiction of the magistrates in that the charge is not a part of the fine but is in addition thereto as a charge by whatever name it may be termed.

*2 The foregoing questions, and possibly others, present serious questions which raise doubts as to the procedure which is to be followed, but in the opinion of this Office, these doubts and validity of the procedure must be determined by court adjudication. The construction of the Act adopted herein is merely an attempt to comply with the intent of the General Assembly in enacting the statute.

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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