

1976 S.C. Op. Atty. Gen. 385 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4523, 1976 WL 23140

Office of the Attorney General

State of South Carolina

Opinion No. 4523

November 22, 1976

***1 The Estate Tax Fees collected by the Probate Judge under Section 27–303, Cole of Laws of South Carolina (1962) are no longer payable to the Probate Judge, but become the property of the County under Article V, Section 6, of Act No. 690 of 1976, 59 Stat. 1859 (Judicial Reform Act).**

Probate Judge Darlington County

You have requested an opinion as to the application of Article V, Section 6, of Act No. 690 of 1976, 59 Stat. 1859 (Judicial Reform Act), which provides:

Each judge of probate and such persons as he may appoint to the office of associate probate judge pursuant to this act shall be compensated in such amounts as may be provided and appropriated by the governing body of the county in which such judges shall serve. Provided, however, that all fees and other statutory revenues collected by the probate court in each county shall be the property of such county. Provided, further, that the salary of a probate judge serving in office on the effective date of this act shall not be reduced during his then current term. The term “salary” as used in this proviso shall only mean the basic annual salary appropriation authorized to be paid to a probate judge of a particular county and shall not include any per case or per commitment fee to which a probate judge may have received as part of his total compensation. (Emphasis added).

The proviso stating that all fees and statutory revenues collected by the probate court shall be the property of the county is in apparent conflict with § 27–303, Code of Laws of South Carolina (1962). § 27–303 provides fee percentages of taxes collected which shall be returned to the probate judge in addition to other compensation he may receive.

It is the opinion of this Office, in keeping with the intent of the Legislature in enacting the Judicial Reform Act, that any fees or statutory revenues received by the probate judge, other than the compensation provided by the county governing body, are to be turned over to and become the property of the county. This includes all fees and statutory revenues beyond the compensation provided by the county, and any earlier enactments of the General Assembly or portions thereof inconsistent with Article V, Section 6, would be impliedly repealed, including those parts of § 27–303 giving the fees for estate taxes collected to the probate judge.

The language and meaning of Article V, Section 6, is unambiguous and clear. Where the language is clear and unambiguous, the language is to be given its normal and plain meaning. [Southeastern Fire Insurance Company v. South Carolina Tax Commission](#), 253 S.C. 407, 171 S.E.2d 355 (1969). Vol. 2A Sutherland Statutory Construction (4th ed.), § 46–01, “Plain Meaning Rule”. A fee can be defined in its normal and plain meaning as a charge for services rendered. [Sweeney v. Board of Review](#), 43 N.J. 535, 206 A.2d 345 (1965). Indeed, this is the application of the word in § 27–303 as the fee is based on a percentage of the services rendered by the probate judge. This “fee”, i.e., a charge for services rendered, under the Judicial Reform Act becomes the property of the county.

***2** The question that naturally arises then is which application and use of the fee is to govern. There seems to be no way in which to construe the two statutes together as they deal with the same subject matter, i.e., fees awarded to the probate judge, but provide inconsistent uses for the subject matter.

It is a well settled principle of law that if there are conflicting provisions of law which cannot be construed together or reconciled, the last act of the Legislature is the law and has the effect of repealing any prior inconsistent provisions. [Garey v. City of Myrtle Beach, 263 S.C. 247, 209 S.E.2d 893 \(1974\)](#); [City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 \(1953\)](#). Cf. Vol. 2A Sutherland Statutory Construction (4th ed.), § 51.03, “Statutes Deemed to be in Pari Materia”.

Such is the case in the relationship between § 27–303 and Article V, Section 6. Each provides a different and inconsistent use of the “fee” for filing of the inventory and appraisal with the Tax Commission. As the last expression of the intent of the Legislature, the Judicial Reform Act has the effect of repealing prior inconsistent provisions, including the payment of the state tax fee as compensation to the probate judge under § 27–303. The payment of the estate tax fee is still allowable under Article V, Section 6, as it is not inconsistent with § 27–303 on this point, but the “fee” is no longer the property of the probate judge, but rather becomes the property of the county.

Thus, in the opinion of this Office, Article V, Section 6, of Act No. 690 of 1976, 59 Stat. 1859 (Judicial Reform Act), as the last expression of legislative intent, has the effect of repealing the prior inconsistent use of the estate tax fee under § 27–303, Code of Laws of South Carolina (1962). Instead of becoming part of the compensation of the probate judge, the fee, under Article V, Section 6, becomes the property of the county. Any inventory and appraisal sent to the Tax Commission as required by § 65–495, as amended, prior to the effective date of Article V, Section 6, on June 30, 1976, the fee will remain the property of the probate judge. The estate tax fee will become the property of the county as to any inventory and appraisal sent to the Tax Commission on or after June 30, 1976.

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