

1974 WL 27212 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 24, 1974

*1 Honorable Isadore E. Lourie
Senator
1224 Pickens Street
Columbia, South Carolina

Dear Senator Lourie:

You have requested my opinion with respect to the validity of a proposed amendment to the statute relating to the Family Court of Richland County in light of the recent decision of Knight v. Salisbury, decided by the Supreme Court of South Carolina on June 17, 1974.

The proposed amendment provides for the creation of the position of Associate Judge for the Family Court for Richland County with certain salary schedules and for the creation of an accounting office for the court vested with authority to charge a percentage of monies collected for alimony, support, and financial maintenance as may be ordered by the Court, not to exceed the sum of five dollars for any one transaction. The fees so collected are deposited in the general fund of Richland County.

It is my opinion that the creation of the additional position of Associate Judge is valid. I reach this conclusion in view of the provisions of Article V of the Constitution of this State relating to the Judicial Department and I do not feel that Knight v. Salisbury is necessarily controlling in that it related to Article VIII of the Constitution which concerned local governmental powers. Article V requires that all subordinate courts be established by general law with uniform jurisdiction. The proposed amendment does not involve this problem. A more extensive consideration of this facet is set forth in a letter directed to the Honorable Allen R. Carter by this Office dated May 15, 1974, a copy of which is herewith enclosed.

With respect to Section 3 of the proposed legislation providing for a charge of five dollars or not more than five percent of amounts collected for alimony, support, and financial maintenance as may be ordered, I entertain some doubt in view of the provisions of Section 15-1095.39 of the Code of Laws, 1962, as amended, which relates to the collection of fees, costs, and allowances in Family Court matters and which constitutes a general law upon the subject. In any event, this section is, in my opinion, severable and I resolve any doubts as to its validity in favor of a presumption of constitutionality. It can be, moreover, most probably construed in a constitutional manner.

I am therefore of the opinion that the proposed legislation is valid, although some reservation must be expressed with respect to Section 3 thereof.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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