

1973 S.C. Op. Atty. Gen. 123 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3513, 1973 WL 20973

Office of the Attorney General

State of South Carolina

Opinion No. 3513

April 19, 1973

*1 RE: An Act to provide for collection charges on unpaid checks in Dorchester County is violative of Constitutional provisions regarding Magistrates and constitutes special legislation.

TO: Honorable John C. West
Governor of South Carolina

You have requested that this Office advise you as to the constitutionality of House Bill No. 1494 which states; In Dorchester County, when an unpaid check is presented to any magistrate for collection and the magistrate or his constable collects such check, the drawee thereof shall be charged ten dollars as a collection charge in addition to any other fine or punishment which may be prescribed. Five dollars shall be retained by the magistrate as his fee and five dollars shall be paid over to the constable or sheriff.

The Constitution of this State provides that when a general law can be made applicable, no special law can be enacted. Article 3 § 34, South Carolina Constitution. It appears that H 1434 is a special law in violation of this constitutional provision.

It is the opinion of this Office that H 1494 is also in violation of the provisions of our State Constitution in that it provides for certain monies to be received by Magistrates in Dorchester County as a fee for the collection of unpaid checks. Article 5 § 20 of the Constitution of South Carolina states. in part, 'Each magistrate shall receive a salary to be fixed by the General Assembly, in lieu of all fees in criminal cases.' (emphasis added). Section 27& -429, Code of Laws of South Carolina, 1962 states: 'It shall be unlawful for any salaried magistrate in this State to receive any compensation for his services in criminal cases other than his salary * * *.'

Based upon the foregoing it is the opinion of this Office that H 1494 is an unconstitutional enactment, and is in direct conflict with existing State statutes regarding the payment of fees in criminal cases.

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