



ALAN WILSON  
ATTORNEY GENERAL

November 7, 2023

M. Amanda Shuler, Esq.  
Whetstone Perkins & Fulda, LLC  
P.O. Box 8086  
Columbia, South Carolina 29201

Dear Ms. Shuler:

We understand you are the attorney for Williamsburg County (the “County”) and wish to request an Attorney General’s opinion on behalf of the County. You state the County seeks “guidance regarding the County’s obligations regarding the Clerk of Court’s expenditure of Title IV-D funds made available to her through the County Treasurer from the South Carolina Department of Social Services.” Additionally, you state:

The County does not deny the Clerk of Court’s exclusive use of the IV-D funds, however, the County wants to ensure that it complies with all applicable statutes, regulations, and other requirements in receiving, holding, and disbursing Title IV-D funds.

Since County Council sets the salaries of county employees and officers in accordance with Section 8-15-10 of the South Carolina Code of Laws, may the Clerk of Court supplement his or her salary, and/or the salaries of county employees working within the Office of the Clerk of Court with Title IV-D funds without the prior approval of County Council?

Second, is it permissible for the Clerk of Court to utilize the IV-D funds to pay supplements or additional compensation to employees without violating Article III, section 30 of the South Carolina Constitution and Section 4-11-170 of the South Carolina Code of Laws? If the supplements are allowed, how may those supplements be paid? May the County require the supplements be paid regularly and uniformly with each pay period as part of the employee’s salary to allow for proper accounting or must the County pay the supplements in a lump sum upon the request of the Clerk of Court?

**Law/Analysis**

Before we address your questions, we find it important to give some background on IV-D funds. IV-D comes from Title IV-D of the Social Security Act, which acts as an enforcement mechanism for child support obligations. In South Carolina Department of Social Services v. Deglman, 290 S.C. 542, 544, 351 S.E.2d 864, 865 (1986), our Supreme Court described the Title IV-D as follows:

In 1974, Title IV, Part D of the Social Security Act was amended by Congress to establish a Child Support Enforcement Program. The legislation requires each state to adopt a plan for providing designated services. Upon approval of the state plan, the federal government reimburses the state for a certain percentage of the costs that are incurred.

In South Carolina, Title IV-D funds are paid to the South Carolina Department of Social Services (the “Department”) who then may enter into agreements with county governments, clerks of court, sheriffs, and other law enforcement entities to reimburse them for the cost of child support enforcement under Title IV-D. S.C. Code Ann. § 43-5-235 (2015). The funds are paid by the Department to the appropriate county treasurer or county finance office on a monthly basis and must be deposited into a separate account for the exclusive use of the contracting entity “for all activities related to the establishment, collection, and enforcement of child support obligations for the fiscal year in which the payments are earned and may be drawn on and used only by the entity providing the service for which the account was established.” Id. Salaries of individuals performing Title IV-D functions are considered costs which may be reimbursed with Title IV-D funds. 45 C.F.R. § 304.21.

You ask whether a clerk of court may use these funds to supplement his or her salary and/or the salaries of county employees within the clerk of court’s office without prior approval of County Council. We will first address the clerk’s ability to supplement the salary of the clerk’s office staff. In a 2006 opinion, we addressed the similar question of whether a clerk of court could add personnel using Title IV-D funds without the approval of the county council. Op. Att’y Gen., 2006 WL 1877110 (S.C.A.G. June 19, 2006). Initially, we noted counties have limited authority over elected officials. Id. We quoted section 4-9-20 of the South Carolina Code (2021), which gives county governments their authority, but excludes authority over elected officials and specifically exempts personnel employed by elected officials from being hired or fired by the county. Discussing section 4-9-20, we stated:

In previous opinions, we interpreted this provision as subjecting personnel employed by a public official to the general personnel policies and procedures generally applicable to county employees. Op. S.C. Atty. Gen., October 29, 1996. However, we concluded section 4-9-30(7) “vests in elected officials... the authority to employ and discharge the county personnel within their departments.” Moreover, we determined: “Such authority would necessarily include assessing the functions and responsibilities of the department . . . to

determine how many employees are needed for the orderly conduct of business and what their duties will be.” Op. S.C. Atty. Gen., February 21, 1991.

Section 14-17-10 of the South Carolina Code (1976) provides for the election of clerks of court in each county by the qualified electorate. In an opinion dated February 18, 1983, we specifically addressed the issue of a county council’s authority over a clerk of court’s personnel.

Since the Clerk of Court is an elected official, the County Council does not have responsibility for the employment and discharge of county personnel in the Office of the Clerk of Court. Section 4-9-30(7), Code of Laws of South Carolina, 1976. Therefore the Clerk of Court has the power under the Home Rule Act to employ and discharge all personnel employed in the Office of the Clerk of Court. Those personnel would, however, be subject to general “personnel system policies and procedures for county employees by which all county employees are regulated.” Id. Furthermore, the Council also has the authority “to establish such . . . positions in the County as may be necessary and proper to provide services of local concern for public purposes . . . .” § 4-9-30(6), supra. However, none of the above described powers or actions by the County Council can infringe upon the general authority of the Clerk of Court, as an elected official, to make all decisions as to employment and discharge of personnel in the Office of the Clerk of Court.

Op. S.C. Atty. Gen., February 18, 1983.

Id. As such, we conclude the clerk of court, as an elected official, has the authority to manage the personnel in his or her office including the hiring and firing of personnel without any oversight by the county. Id. We further surmised the ability to determine how many employees are needed to conduct business is included with this authority. Id.

In another opinion issued in 1995, we discussed whether a clerk of court was required to follow the county procurement code in expending Title IV-D funds. Op. Att’y Gen., 1995 WL 803674 (S.C.A.G. June 9, 1995). While we determined that the county’s procurement code applies to clerks of court as their office falls within the auspices of county government, we cautioned as follows:

[T]he IV-D funds are for the exclusive use of the Clerk of Court, in this instance, unless such funds revert to the county’s general fund at the end of the fiscal year; the county may not, by application of its procurement policies or regulations, take actions which would deny the exclusive use of the funds to the Clerk of Court. Whether such actions taken by the county would amount to a

denial of the exclusive use of the funds by the Clerk of Court would be questions of fact which are or would be beyond the scope of an opinion of this Office.

Id.

From our 2006 opinion, other than complying with general personnel policies, clerks of court, as elected officials, have authority to manage their personnel without oversight from their county governments. Moreover, section 43-5-235 and our 1995 opinion make clear that Title IV-D funds are to be used exclusively by the clerk of court for activities related to the establishment, collection, and enforcement of child support and can be used to fund the salaries of those performing Title IV-D functions. Therefore, it is our opinion that should the clerk of court wish to use Title IV-D funds to supplement the salaries of county employees working in the office of the clerk of court, he or she may do so without prior approval of the county so long as the funds are used in accordance with section 43-5-235.

Nonetheless, as you mentioned, we must note the prohibition contained in section 30 of article III of the South Carolina Constitution, which provides:

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrection.

S.C. Const. art. III, § 30. In addition, you also call our attention to section 4-11-170 of the South Carolina Code (2021), which provides: “No member of the governing body of any county shall vote for an extra allowance to any person who is paid by salary, nor shall the treasurer of any county knowingly pay to any such person any extra allowance.” Therefore, the question arises as to how clerk’s office employees may be paid Title IV-D funds for services they provide in connection with child support enforcement.

We addressed a similar question regarding a clerk of court’s ability to pay morale incentives to employees using bail bondsmen fees collected by the clerk of court in an opinion issued in 2017. Op. Att’y Gen., 2017 WL 2601033 (S.C.A.G. June 5, 2017). Like Title IV-D funds, we determined that clerks of court have exclusive use of these fees. Id. But we noted that the clerk of court could “not expend the fees in a manner inconsistent with state or county provisions restricting the use of public funds.” Id. Citing section 30 of article III of the South Carolina Constitution, section 4-11-170, and prior opinions interpreting those provisions, we noted bonus payments are prohibited under the South Carolina Constitution and state law. Id. As such, we advised:

Based upon our August 1, 2016 opinion, we believe that a clerk of court can not use the bail bondsmen fees to pay his employees a “small moral[e] improvement incentive.” A clerk of court can not pay an employee

compensation which is greater than the amount that the employee agreed to work for under contract or that is greater than the employee's salary. A clerk of court also can not pay an employee after the work has been performed. However, contracts providing for a regular salary plus bonuses for service for a stated period of time are legally enforceable and may be a method for a clerk of court to reward employees for their continuous hard work. Although please keep in mind that pursuant to section 8-15-10, the county council sets the compensation for county officers and employees.

Id. As such, a clerk of court desiring to supplement his or her employees' salaries with Title IV-D funds, must also work within these same parameters including not providing such supplements after the work has been performed. Moreover, in accordance with section 43-5-235 and Title IV-D, Title IV-D funds should be used to only pay for salaries attributable to the establishment, collection, and enforcement of child support obligations. Therefore, we suggest the County and the clerk of court work together to determine the salary of each employee based upon the portion of the employee's time performing traditional County functions and the portion of the employee's time performing Title IV-D functions to determine the appropriate funding of that employee's salary.

Regarding whether a clerk of court's salary may be supplemented by Title IV-D funds, the answer is less clear. Section 8-21-300 of the South Carolina Code (2019) governs salaries of clerks of court and registers of deeds.

The clerks of court and registers of deeds of the several counties shall receive such salaries for performance of their duties as may be fixed by the governing body of the county, which shall not be diminished during their terms of office, and such compensation shall not be measured or affected by the fees and costs received by such officers under the provisions of this article. All such fees and costs received under the provisions of this article by such officials of any county shall be accounted for and paid into the general fund of the county as directed by the governing body thereof.

S.C. Code Ann. § 8-21-300. According to this provision, the salary of the clerk of court must be set by the governing body for the county. Additionally, it specifies that the clerk of court's salary cannot be impacted by the collections of fees, which must be paid over to the general fund of the county. As we explained above, Title IV-D funds are not fees paid over to the county, so there is some question as to whether clerks of court may receive such funds as salary. However, in prior opinions, we concluded there is a strong legislative intent that clerks of court receive salaries in lieu of fees. Op. Att'y Gen., 1987 WL 342687 (S.C.A.G. Sept. 24, 1987). While section 8-15-65 of the South Carolina Code (2019) specifically affords salary supplements to the clerk of court from the State, we did not find a provision in the code allowing Title IV-D funds to be used to increase the salaries of clerks of court. Finding no statutory authority allowing Title IV-D funds to be used to supplement the salaries of clerks of court and a strong presumption in favor of clerks

M. Amanda Shuler, Esq.  
Page 6  
November 7, 2023

receiving the salary set for them by their county governing body, we are skeptical that a court would allow a clerk of court to designate a supplement for themselves. Nevertheless, we believe Title IV-D funds could be used to fund a portion of the clerk of courts salary attributable to the establishment, collection, and enforcement of child support obligations.

### Conclusion

As part of Congress's enactment of Title IV-D, it provided funding for child support enforcement carried out by states in accordance with an agreed upon plan. In response, the South Carolina Legislature enacted section 43-5-235, along with other provisions, which allowed the South Carolina Department of Social Services to contract with clerks of court to develop and implement child support collection programs and receive Title IV-D funds to pay for a portion of the cost of such programs. Section 43-5-235 makes clear these funds must be exclusively used only by the contracting entity for the "establishment, collection, and enforcement of child support obligations . . . ." Based on prior opinions of this Office, we recognize a clerk of court, as an elected official, has authority to manage their own staff. This authority coupled with the exclusive authority given to clerks of court to manage Title IV-D funds received according to their agreement with the Department, supports our belief that clerks of court may use Title IV-D funds to supplement the salaries of their employees performing Title IV-D functions. Nonetheless, we caution that section 30 of article III of the South Carolina Constitution and section 4-11-170 of the South Carolina Code prohibit bonus payments for work previously performed. Therefore, we suggest the County and the clerk of court work together to establish employees' salaries based upon their performance of traditional county functions and Title IV-D functions.

While a clerk of court may have exclusive control over Title IV-D funds and may perform Title IV-D functions, we are concerned that section 8-21-300 of the South Carolina Code prohibits a clerk of court from supplementing his or her own salary outside of the amount fixed by the governing body of the county without express statutory authority from the Legislature.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General