

6637 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 12, 2000

The Honorable Michael R. Davis
Chief Judge
Richland County Summary Courts
Post Office Box 9523
Columbia, South Carolina 29209

Dear Judge Davis:

In a letter to this Office you questioned the fees and costs for filing various matters in the summary courts, particularly referencing that summary courts collect the sheriff's or constable fee and applicable mileage at the time of filing.

South Carolina Code Ann. §§ 8-21-1010 and 1060 (Supp. 1998) establish a specific schedule of fees and costs to be collected by magistrates in this State for various matters, including civil actions and landlord-tenant actions. Moreover, South Carolina Code Ann. § 8-21-1080 (1986) provides that the fees prescribed by Article 9, which includes §§ 8-21-1010 and 8-21-1060, with the exception of provisions of South Carolina Code Ann. § 34-11-70, are the only fees that may be charged. The provisions of § 8-21-1060 in establishing the fee to be collected for certain matters also provide for the collection of mileage. A prior opinion of this Office dated March 14, 1997, which dealt with fees to be collected for claim and delivery actions and which also referenced §§ 8-21-1010 and 8-21-1060 as establishing the relevant fees for magistrate courts, commented

It is evident that §§ 8-21-1010 and 8-21-1060 are somewhat ambiguous in terms of the total fees to be collected for claim and delivery and do not definitely state such exact amount. I am advised that the various counties collect different fees because of the confusion created. I am also advised that certain counties collect a standard "package" fee of \$40.00 in every claim and delivery action (25+10+5) whether or not a bond and surety is posted. These counties' rationale is that the "mileage" envisioned in § 8-21-1060(4) is so variable that a standard fee is necessary in the name of certainty and uniformity whether or not security is posted. This is probably a good approach for the larger urban counties, but may not be suitable for rural

Request Letter

The Honorable Michael R. Davis
Page 2
January 12, 2000

counties. It is my advice that the standard single fee approach is certainly not unreasonable in the absence of legislative clarification and has as its virtue the certainty of the fee. However, I cannot say that this \$40.00 fee is absolutely required in every county or that these counties which are charging less than that amount are not acting in accord with the statute. Due to the fact that "mileage" is such a variable, it is almost inevitable that the fee will vary from place to place. Again, clarification is probable desirable.

There have been no amendments to the relevant statutory provision since the opinion referenced was issued. Therefore, until there is legislative clarification, the standard fees that are established by some counties do not appear unreasonable. However, as set forth in the opinion, the establishment of such fees obviously make it certain that the fees will vary.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents no position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the matter of a formal opinion.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

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cc: Sharon Turner, Court Administrator