

# The State of South Carolina



## Office of the Attorney General

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ATTORNEY GENERAL

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August 9, 1988

Timothy E. Meacham, Esquire  
Florence City Attorney  
City-County Complex  
Drawer AA  
Florence, South Carolina 29501-3456

Dear Mr. Meacham:

In a letter to this Office you indicated that the City of Florence is considering an ordinance which would establish an administrative penalty of one hundred (\$100.00) dollars for controlled substance violations. Such penalty would be in addition to any regular fine and would be deposited in the Florence Police Department's narcotics fund. The monies in the fund would be used for investigating and prosecuting narcotics violations.

An opinion of this Office dated June 19, 1984 dealt with the constitutionality of certain proposed legislation concerning court libraries. The legislation, if it had been enacted, would have authorized county governing bodies to add as costs certain amounts upon the forfeiture of a bond in a magistrate's court or when a fine was imposed and collected in the magistrate's court or circuit court. The opinion in advising against the constitutionality of such legislation stated:

(b)y allowing each county the discretion to impose additional costs in order to fund the court library, the proposed bill makes it possible to have a system of non-uniformity with respect to such costs in the court system. Such disparate treatment is in apparent violation of Article V of the South Carolina Constitution (1985 as amended) which requires a uniform judicial system. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978). While the

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Crowe case related to fees collected by magistrates, this office has concluded that the requirements of Article V related also to fines, Op. Atty. Gen., March 2, 1981, and we see no reason why forfeitures would not be included as well.

Consistent with such, an opinion of this Office dated September 15, 1986 concluded that an ordinance of a particular county which taxed certain costs on defendants found guilty in the magistrates' courts was of doubtful constitutionality inasmuch as it appeared to be violative of the provisions of Article V of the State Constitution which mandate a uniform judicial system in this State. The opinion noted, of course, that this Office possessed no authority to declare a county ordinance unconstitutional; only a court would have such authority.

Also, in an opinion dated March 17, 1988 it was concluded that the practice of imposing court costs at the discretion of individual magistrates or municipal judges beyond those generally authorized by state statute would be of doubtful constitutionality in light of the provisions of Article V of the State Constitution. Also, it was determined that the authorization of such separate costs by municipal or county ordinance would similarly appear to be of doubtful constitutionality.

In an opinion dated March 31, 1988, this Office considered the question of whether a municipality could add a surcharge to all uniform traffic tickets resolved in the municipal court which would be used to defray municipal law enforcement training costs. Citing the opinions noted above, it was concluded that such a surcharge would be of doubtful constitutionality inasmuch as such would conflict with the provisions of Article V mandating a uniform judicial system.

Consistent with the above, it appears that an ordinance of a single municipality establishing an administrative penalty for controlled substance violations which would be used in investigating and prosecuting narcotics violations would be of doubtful constitutionality in light of the provisions of Article V of the State Constitution. However, only a court could make such a determination.

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If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions