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# The State of South Carolina



## Office of the Attorney General

Opinion No 88-84  
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November 1, 1988

The Honorable Carolyn C. Turner  
Barnwell County Clerk of Court  
Barnwell County Courthouse  
Post Office Box 723  
Barnwell, SC 29812

Dear Ms. Turner:

You have requested the Opinion of this Office as to whether clerks of court are to retain for use in their offices or give to the county treasurer the distribution of fees paid by bail bondsmen under § 38-53-100(c) (paragraph (c)) of the Code of Laws of South Carolina, 1976. Provisions of this statute are set forth as follows, together with a portion of § 38-53-100(d):

"(c) Beginning the second year after enactment, the Commissioner shall forward forty percent of all fees collected under subsections (a) and (b) of this section to the clerk of court of the county where the principal place of business of the bondsman or runner is located. The remaining sixty percent of collected fees must be forwarded to the State Treasurer to be placed in the general fund of which one-third must be paid to the State Law Enforcement Division and two-thirds paid to the Commissioner to offset expenses incurred under the provisions of this chapter.

(d) In addition to the fees herein provided, a bondsman shall pay to the clerk of court of any county where he is doing business other than the county of his principal place of business the

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sum of one hundred dollars annually to be paid directly to and retained by the clerk. . . ."

Previous Opinions of this Office have concluded that county treasurers are the proper parties to receive, hold and disburse county funds. Ops. Atty. Gen. (October 6, 1986, June 29, 1979 and April 5, 1978; See § 12-45-210 et seq.) Here, the extent to which the county treasurers have control over paragraph (c) fees turns upon the legislative intent as expressed in § 38-53-100. South Carolina Department of Highways and Public Transportation v. Dickinson, \_\_\_\_\_ S.C. \_\_\_\_\_, 341 S.E.2d 134 (1986). Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984). Section 38-53-100(c) directs the Insurance Commissioner to "forward forty percent of all fees...to the clerk of court..." but does not expressly address whether the clerk of court is to retain the money or send it to the county treasurer; however, that the money is directed to be forwarded to the clerk of court rather than to the county treasurer indicates that the clerk of court is to have some use of the funds.

This conclusion that clerks of court have some benefit of the fee money is supported by other provisions of paragraph (c) (Sutherland Statutory Construction, Vol. 2A, §46.05) that provide for the use of the remaining fees by the State Law Enforcement Division and Insurance Commission after deposit with the State Treasurer. Moreover, the payment of fees to be retained by the clerks under paragraph (d) of § 38-53-100 and the forwarding of fees to the clerks by the Insurance Commissioner under paragraph (c) indicate that all of these fees are to be for the benefit of the clerks of court except as to the 60% of the the paragraph (c) fees that go to other agencies. This reading of these paragraphs is consistent with the duties given to clerks of court with respect to bondsmen. See e. g. § 38-53-210 et seq. Although paragraph (c) does not expressly provide for retention of the fees by the clerk of court as does paragraph (d), a reason for the absence of this language is that the fees in paragraph (d) are paid directly to the clerk by the bondsmen whereas, in paragraph (c), the fees are collected by the Insurance Commissioner and then forwarded to the clerk.

This conclusion that paragraph (c) of § 38-53-100 was intended to benefit clerks of court can be reconciled with prior Opinions concerning the authority of county treasurers so as to give effect to all provisions (Sutherland, Vol. 2A, § 51.02) by the clerks

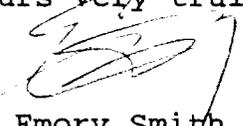
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of court depositing the fees received under paragraph (c) with the County Treasurer with the money to be credited to and available for the benefit of the clerks of court. A similar procedure was found to apply with respect to certain child support enforcement funds. Ops. Atty. Gen. (October 6, 1986).

In conclusion, fees distributed to the clerks of court by the Insurance Commissioner should be deposited with the county treasurers to the credit of and for the full benefit of the clerks of court for their offices. Of course, as you know, such fees may not be used for the personal financial benefit of the Clerks of Court, but must be used for the benefit of the clerks' offices. See Ops. Atty. Gen. (January 8, 1987, September 24, 1987 and November 4, 1987.)

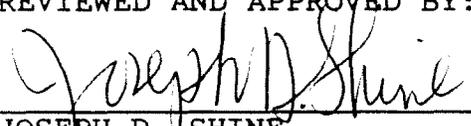
If you need additional information, please let me know.

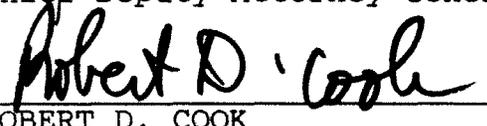
Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:

  
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