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The State of South Carolina



Opinion No. 87-78

Office of the Attorney General

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August 27, 1987

George A. Markert, Assistant Director
South Carolina Court Administration
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Dear George:

In a letter to this Office you raised several questions pertaining to recent legislation, R252, which in part amends Section 56-5-2950 of the Code so as to provide a fifty dollar fee for administering chemical tests of the breath, blood, or urine of individuals arrested for driving under the influence. Such provision in providing for the fee specifically states

SLED shall administer the provisions of this subsection and may make regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the law enforcement officer must be paid from the general fund of the State. A fee of fifty dollars is assessed at the time of sentencing persons convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 56-5-2930 or 56-5-2945. This fee must be forwarded by the County treasurer to the general fund of the State to defray any costs incurred by SLED and individuals and institutions obtaining the samples forwarded to SLED.

In your first question you asked whether the fee must be assessed if no test was administered or used in evidence, such as where the defendant refused to take the test but was convicted on other evidence or where the test was not taken due to the

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defendant's physical condition or where procedural errors required the test to be ruled inadmissible. In the opinion of this Office, the plain reading of the above provision indicates the fifty dollar fee should be assessed in all instances in which a test was administered where there is a conviction, a plea of guilty or nolo contendere, or forfeiture of a bond for a violation of Section 56-5-2930 or 56-5-2945. Such fee would be assessed even where procedural errors required the test to be ruled inadmissible. Aside from a plain reading of the above provision, the title to the referenced legislation states in part that such legislation is intended "... to impose a fee for administering the test on persons convicted of violations of Section 56-5-2930 or 56-5-2945...." Generally, the title of an act may be considered in the determination of legislative intent. University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). Therefore, the title of the legislation also supports the conclusion that the fifty dollar fee should be collected where the tests were administered and there is a conviction, plea of guilty or nolo contendere, or bail forfeiture for violating Section 56-5-2930 or 56-5-2945.

You next asked whether the fee or any portion of it may be waived, such as where there is an inability on the part of a defendant to pay. As referenced above, there is no express provision authorizing the waiver of the fifty dollar fee. In the absence of such express authorization, this Office is unable to conclude that the fee or any portion of it may be waived. The fee is comparable to the assessments provided by Sections 24-23-210 and 23-23-70 for the community corrections program and the Law Enforcement Training Council. This Office in an opinion dated September 4, 1985 concluded that such assessments similarly could not be waived. As to circumstances where there is an inability to make immediate payment, as referenced in the September 4, 1985 opinion, a schedule in which payments on the fee could be made should be established. The schedule would be similar to the schedule for the payment of a fine by an indigent as provided by Section 17-25-350 of the Code.

You also asked whether the fifty dollar fee must be collected if a jail term only is imposed. As referenced above, the provision states that the fee "... is assessed at the time of sentencing persons convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 56-5-2930 or 56-5-2945." There is no provision authorizing the waiver of the fee if a jail term only is imposed.

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In your last question you asked whether the fifty dollar fee should be collected if a fine is imposed but suspended. In the opinion of this Office, the fee should be collected even if a fine is imposed and then suspended. As noted in the September 4, 1985 opinion, authority to suspend sentences, or in this instance a fee, can be expressly conferred. However, absent express statutory authority for such a suspension, the fee should be collected.

If there is anything further, please advise.

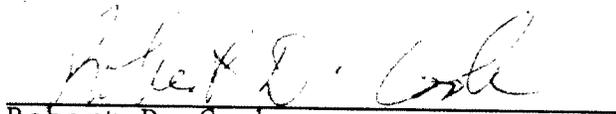
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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