

1977 WL 37206 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 17, 1977

*1 Mr. Thomas O. Lawton, Jr.
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QUESTION:

Does the Allendale County Council have authority to set fees for the Probate Court which differ or conflict with Section 14-23-810 Code of Laws of South Carolina (1976)?

STATUTES AND CASES:

Article III, Section I, Constitution of South Carolina, Section 14-23-810 Code of Laws of South Carolina (1976); Act No. 1149 (1974); Opinion Attorney General No. ____ (June 28, 1977); Article III, Section 34, Constitution of South Carolina; [Shillito v. City of Spartanburg](#), 214 S.C. 11; [Rigdill v. Clarendon County](#), 188 S.C. 460, 199 S.E. 683 (1938); [Coit Industries, Inc. v. Swirl, Inc.](#), 264 S.C. 142, 213 S.E. 2d 445; Act No. 690 (1976), Article V, Constitution of South Carolina.

DISCUSSION:

Article III Section I, Constitution of South Carolina vests the whole legislative power in the General Assembly. Pursuant to that power the legislature has enacted a general provision enumerating the fees to be collected and the amounts of such fees in the Probate Court, Section 14-23-810, Code of Laws of South Carolina (1976).

Act No. 1149 (1974) setting fees for Bamberg County and those sections of the Code dealing with certain counties exist as special legislation, contrary to the general law. These fees vary from and conflict with those in the general provision of Code Section 14-23-810.

As noted in a June 28, 1977 Opinion of this office, Article III, Section 34 of the Constitution does not prohibit classification by the legislature. However, the Constitution does prohibit special laws where a general law can be made applicable. If the classification exists, there must be a justification for it.

The Court has stated,

The language of the Constitution which prohibits a special law where a general law can be made applicable, plainly implies that there are, or may be, cases where a special Act will best meet the exigencies of a particular case and in no wise be promotive of those evils which result from a general and indiscriminate resort to local and special legislation. There must, however, be a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objections and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation. [Shillito v. City of Spartanburg](#), 214 S.C. 11 at 20.

The Court further stated that there must exist some peculiar local condition requiring special treatment. [Shillito, supra](#), at 21.

A special provision such as that proposed by Allendale County dealing with Probate Court fees for only that county cannot be so justified. Code Section 14-23-810 enumerates all the fees to be collected in the Probate Courts and sets the amounts of such fees. Allendale County has shown no reason or peculiarity requiring different fees for the same functions performed by the Probate Courts throughout the state. These special provisions do not meet the test of a classification as set out by the South Carolina Supreme Court in Shillito, supra.

*2 In Rigdill v. Clarendon County, 188 S.C. 460, 199 S.E. 683 (1938) the Court held that the various amendments to Section 14-23-810 relating to the fees of clerks of court and of judges of probate which affected only certain counties were unconstitutional as special legislation. After striking down these amendments, the court stated that the general section pertaining to fees was valid as affecting all counties. See Rigdill, supra, at 470, 471.

As noted by the Court in Coit Industries, Inc. v. Swirl, Inc., 264 S.C. 142, 213 S.E. 2d 445 (1975), and the General Assembly in Act. No. 690 (1976), Article V of the Constitution mandates a statewide uniform judicial system. This constitutional provision and the Court's decisions firmly established the policy that the judicial system be the same from one county to another. The unified court system mandate clearly destroys any rational basis for a classification that would allow one county to have a different fee schedule than another for the same services.

Therefore, it is the opinion of this office that fee schedules such as those proposed by Allendale County and followed in Bamberg County which are contrary to the general provision of Code Section 14-23-810 are unconstitutional. The only fee schedule available for the Probate Courts is to be found under South Carolina Code Section 14-23-810 (1976).

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