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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 3, 1999

The Honorable Grady L. Patterson, Jr.
State Treasurer
Wade Hampton State Office Building
Hand Delivery

Dear Mr. Patterson:

You have asked whether the provisions for one hundred percent assessments on fines in §§14-1-206 and 14-1-207 (Supp. 1998) and the 74 percent assessment in §14-1-208 (Supp. 1998) are controlling as to the provisions in §14-1-209 (Supp. 1998) for assessments on fines paid in installments. Sections 14-1-206 through 14-1-208 are controlling as to §14-1-209 for the reasons discussed below.

Section 14-1-206(A) contains the following provisions as to this matter for general sessions court which are identical to those in §14-1-207 (A) for magistrate's court:

> ... a person who is convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense tried in general sessions court must pay an amount equal to100 percent of the fine imposed as an assessment....

Similar provisions set a 74 percent assessment for municipal court. §14-1-208(A).

Section 14-1-209 now provides as follows:

> (A) If a payment for a fine and assessment levied in the circuit court is made in installments, the clerk of court must treat sixty-two percent of each installment as payment for a fine and distribute it pursuant to Section 14- 1-205 and thirty-eight percent of each installment as payment for an assessment and distribute it pursuant to Section 14-1-206.

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Request Letter

> (B) If a payment for a fine and assessment levied in the magistrate's court is made in installments, the magistrate must treat 47 percent of each installment as payment for an assessment and distribute it pursuant to Section 14-1-207.
>
> (C) If a payment for a fine and assessment levied in the municipal court is made in installments, the municipal court judge must treat 40 percent of each installment as payment for an assessment and distribute it pursuant to Section 14-1-208.

These allocations under §14-1-209 differ markedly from those under §§14-1-206 through 14-1-208.[1] The history of these provisions provides some guidance as to their meaning.

According to the annotated history of these provisions in the code, §§14-1-206 through 14-1-209 originated with Act 497, Part II § 36, 1994 S.C. Acts 5708. Under that Act, the assessments in §§14-1-206 and 14-1-209 were consistent as to circuit courts with a 62 percent assessment in §206 and a 38 percent withholding from installment payments under §209[2]. The provisions for magistrate's court were also similar under §§207 and 209 in 1994.[3] For reasons not readily apparent, the percentages in §209 differed from those for municipal courts in §208.[4]

A 1996 law made changes to §§206 and 209 such as changing the reference from circuit court to general sessions, but the Act did not alter the percentages allocated thereunder for assessments. Act No. 292, 1996 S.C. Acts 1961. No other changes have been made in §209 since 1996 but the assessments have been changed since then in the other statutes.

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[1] With a 100 percent assessment under §§206 and 207, the assessments represent 50 percent of the total of the fine and the assessments, but §209, respectively, allocates 38 percent and 47 percent of installment payments to assessments in general sessions courts and magistrates courts. Section 208 allocates 42.5 percent of the total of the fine and the assessment (74% assessment divided by total of 100% fine and 74 % assessment) to assessments in municipal court whereas §209 allocates 40 percent of installment payments as an assessment in municipal court.

[2] A 62 percent assessment under §206 equals 38.3 percent of the total of the fine and the assessment (62 % assessment divided by total of 100% fine plus 62% assessment).

[3] The 88 percent assessment under §207 when divided by the 188 percent total of the fine and assessment thereunder yielded a percentage of the total of 46.8 which approximated the 47 percent allocation to assessments from installment payments under § 209.

[4] The 52 percent assessment under §208 when divided by the 152 percent total of the fine and assessment thereunder yielded a percentage of the total of 34.2 which was less than the 40 percent allocation to assessments from installment payments under § 209.

A 1997 amendment to §§206 and 207 changed previous assessments of 62 percent for general sessions court and 88 percent for magistrates court to the present 100 percent for both courts. Act No. 141 §§ 4 -5, 1997 S. C. Acts 742-744. The 1997 law changed the assessment for municipal court under §208 from 52 to 64 percent which was slightly less than the 40% allocation of installment payments to assessments for the those courts under §209. *Id.* at § 6, p. 746.[5] The 1998 amendment upped the percentage to the present 74 percent which, as noted, widened the difference between §§208 and 209 as to municipal courts. Act No. 434 §12, 1998 S.C. Acts 3232.

The above summary shows that §209 was initially consistent with percentages for assessments for circuit and magistrates courts, but that subsequent provisions in §§206 and 207 created different assessments thereunder for those courts. Municipal court provisions under §208 have never been consistent with §209 except in 1997 when the figures were close.

The following rules of construction are applicable here:

> In the construction of statutes, the dominant factor is the intent, not the language of the legislature. *Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956).* A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. *Id.*

Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67,74, 321 S.E. 2d 258, 262 (1984).

> "General and specific statues should be read together and harmonized if possible But to the extent of any conflict between the two the special statute must prevail."

Criterion Insurance Co. v. Hoffman, 258 S.C. 282, 188 S.E. 2d 459 (1972); Ops. Atty. Gen. (7-12-85).

> The last passed statute will prevail if the statutes are incapable of any reasonable reconcilement.

Yahnis Coastal, Inc. v. Stroh Brewery, 295 S.C. 243, 368 S.E. 2d 64 (1988).

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[5] The 64 percent assessment under §208, when divided by the 164 percent total of the fine and assessment thereunder, yielded a percentage of the total of 39 percent which was slightly less than the 40 percent allocation to assessments from installment payments under § 209.

Applying these rules to the instant matter shows a legislative intent to make §209 consistent with §§206, 207 and 208 at various times during their legislative history. These statutes are now no longer consistent with §209 as to their percentage allocations, and the more recently passed percentage allocations in §§206, 207 and 208 are specific to the courts therein. In addition, §§206, 207 and 208 each contain detailed provisions as to how the assessments are to be allocated among various programs. The more recent and more specific expression of legislative intent in §§206, 207 and 208 as to assessment percentages and earlier attempts by the legislature to make those provisions consistent with §209 indicates a legislative intent that the percentages in §§206, 207 and 208 should be controlling as to the percentages allocated to assessments from installment payments under §209. In other words, §209 should be applied consistently with §§206, 207 and 208 with the latter statutes being controlling as to the percentages.

You have also asked whether an attempt should be made to recover any monies that were not allocated in accordance with the above conclusions. Because the General Assembly passed the above legislation and may wish to clarify the above provisions, the legislature may want to consider the issue of what if any action should be taken as to prior allocations.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Deputy Attorney General