



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

August 10, 2004

The Honorable B. G. Alderman, Jr.  
Chief Magistrate, Clarendon County  
Post Office Box 371  
Manning, South Carolina 29102

Dear Magistrate Alderman:

In a letter to this office you indicated that your court has been contacted by a private company to collect delinquent fines and fees that you have been unable to collect. A fee for the service would be added to the fine and charged to the debtor. In association with such, you have raised several questions regarding the practice. You asked:

Is it lawful for a magistrate's court to associate with a private company to collect delinquent fines and fees?

If so, is it lawful for a private company to assess a collection fee from a debtor in addition to the fines and fees?

If not, is it lawful for the magistrate's court to pay collection fees to a private company from the fines collected?

Enclosed is a copy of a prior opinion of this office dated December 14, 1999 which comments that

it is clear that a magistrate cannot by contract delegate away judicial authority...On the other hand, nothing in the existing statutes precludes the court, acting through the county, from using a private company to assist it in performing purely administrative or ministerial functions. So long as the magistrate does not abdicate or relegate his or her statutory duties or judicial functions, the magistrate may utilize private personnel to assist it in performing duties to insure that the court's order is carried out or implemented. The question is where the line is drawn between a lawful and unlawful delegation....

As to the collection of fines and other revenue, the opinion commented further that

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While there is no doubt that physical collection is more in the nature of a ministerial one, the statutes...appear to contemplate that the magistrate and only the magistrate must collect the monies owed by a defendant.

The opinion referenced that pursuant to S.C. Code Ann. Section 22-1-70 (1989)

all fines and penalties imposed and collected by magistrates in criminal cases must be forthwith turned over by them to the county treasurers...This statute deems it a criminal offense for any magistrate to "neglect or refuse to pay over all fines and penalties collected by him..." Thus, there appears to be little leeway in our existing statutes allowing the physical collection function to be delegated to others.

The opinion concludes that

Thus, while cases...imply authority to delegate by contract the collection of fines and parking tickets to a private corporation, the better reasoned view in South Carolina would be to require express legislative authorization by the General Assembly in order to insure that such delegation is lawful. Even though this function is probably ministerial in nature, the statutes clearly contemplate that the magistrate (or magistrate's office) must collect the fine.

Of course, nothing would prevent the county or the magistrate from employing the private company to assist the court and the county in collecting past due fines, etc. in ways other than taking physical custody of the monies. For example, telephone calls or letters urging payment could fall into this category. However, the responsibility for actually handling and collecting these public monies must undoubtedly remain the province of the magistrate, absent additional legislative authorization.

Consistent with the referenced opinion, absent further legislative authorization, it would not be proper for a magistrate to associate with a private company to collect delinquent fines and fees. As stated in the opinion, such is a function of the magistrate or his office. However, as stated above, nothing would prevent the county or the magistrate from employing the private company to assist the court and the county in collecting past due fines, etc. in ways other than taking physical custody of the monies. For example, telephone calls or letters urging payment could fall into this category. Again, the magistrate must retain the responsibility of actually handling and collecting the monies. I would additionally cite that portion of the opinion which states:

With respect to the physical collection and handling of public monies such as fines, restitution, etc. such should be done exclusively by the court and its officers rather than by the company, in the absence of legislative authorization therefor. If it is important and helpful to the county and the magistrates courts to employ private

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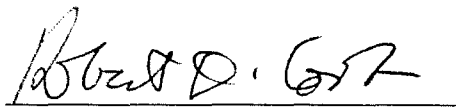
companies to assist in collecting overdue fines and other monies owed, the General Assembly should expressly authorize such delegation of the collection function. Currently, the statutes make this function the province only of the magistrate, and thus we are constrained to read these statutes literally. While the Office favors any process which would assist the court and county more readily in physically collecting the fines and monies owed by defendants, the Legislature, rather than an opinion of this Office, should clearly authorize such a process.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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