

7811 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

July 28, 2004

The Honorable Mark E. English
Chief Magistrate, Newberry County
Newberry County Central Court
3239 Louis Rich Drive
Newberry, South Carolina 29108

Dear Judge English:

In a letter to this office you referenced that you had been contacted by an out of state company that assists magistrates courts in the collection of unpaid tickets. The company charges no fees for the assistance from the courts but charges defendants with unpaid tickets up to a forty percent fee for the collection of the tickets. You questioned the authority for the company to collect such on such tickets.

Enclosed is a copy of a prior opinion of this office dated December 14, 1999 which concludes that any physical collection and handling of public monies should be done exclusively by the courts and its officers rather than by a company with whom a contract could be entered in order to attempt to collect such fines. The opinion stated

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 of 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.

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In association with your question you questioned the interpretation of S.C. Code Ann. Section 14-1-202 (Supp. 2003) which states in part:

The clerk of the appropriate court, or county treasurer or municipal treasurer, as appropriate, may compromise any fine, penalty, cost, fee, assessment, surcharge, service charge, restitution, or other amount imposed by a court or as a direct consequence of a court order to the extent necessary to collect these items. If a clerk or treasurer compromises an amount pursuant to this subsection, the proceeds representing the collected amount must be distributed pro rata to the entities that otherwise would have received the original amount.

In my opinion, such provision does not provide any authority for a company to collect on unpaid tickets such as in the manner you specified. The language that the clerk "may compromise...to the extent necessary to collect these items" would not appear to authorize such activity. As stated in the prior opinion referenced above, specific legislative authorization would be necessary in order to authorize a private company to collect on unpaid tickets. Also, Section 14-1-202 raises possible separation of powers arguments in violation of Article I, § 8 of the South Carolina Constitution which requires the separation of legislative, executive and judicial powers in its allowing officials outside the judicial branch to compromise fines.

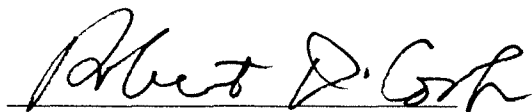
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General