



HENRY McMASTER
ATTORNEY GENERAL

August 10, 2006

W. Lawrence Brown, Esquire
Assistant County Attorney
Aiken County
Post Office Box 380
Langley, South Carolina 29834-0380

Dear Mr. Brown:

In a letter to this office you referenced that the Aiken County Sheriff's office had executed on and conducted a sale of real estate to satisfy a judgment. The successful bidder at the sale was the owner of the judgment who bid the full amount of the judgment in order to stave off other potential bidders. According to your letter, this individual will not be actually paying the funds to take title to the property since that would amount to him paying himself. As to such, a question has been raised as to what fees should be collected in connection with the sale.

You indicated that the sheriff's deputies have received training that indicated that they can collect fees pursuant to both S.C. Code Ann. § 15-39-770 and 23-19-10.

S.C. Code Ann. §§ 15-39-610 et seq. provide for property taken under execution to be sold. Section 15-39-640 states that

[a]ll judicial sales shall be made by the sheriff, unless otherwise provided by law. In all such sales made by him his fees shall be such as are allowed by law on sales under executions issuing from the court of common pleas.

Section 15-39-770 states that

[t]he officer making judicial sales of real estate may charge for services rendered in making such sales and in paying over the proceeds of such sales to the parties entitled thereto and for rendering all services in connection with such sales for which a commission fee is authorized by law a fee of seven dollars in case of such sale for a price of five hundred dollars or less, and in the case of a sale for more than five hundred dollars he shall be entitled to an additional fee of one per cent of the excess. No fees, charges or commissions, other than those herein authorized, may be charged

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by the officer making such sales, except that if such officer acted as referee or master in any case and took testimony, made a report or performed any other service prior to the order or decree of sale he shall be entitled to the regular legal fees therefor. When such officer is upon a salary basis of compensation all such fees, charges and commissions shall be paid to the county treasurer as may be provided by law.

Section 23-19-10 provides a general fee schedule for sheriffs stating that

[e]xcept as otherwise expressly provided by general law, the fees and commissions of sheriffs are as follows:

(a) There must be paid as commissions on all monies collected by the sheriff of a county, if under five hundred dollars, seven and one-half percent, and, if over that amount, seven and one-half percent on the first five hundred dollars and three percent on the balance above that amount.

The deputies have asserted that both Sections 15-39-770 and 23-19-10 apply, arguing that one fee is for collecting the money and the other is a fee for the officer making the sale. The buyer has asserted that Section 15-39-770 should be the only fee inasmuch as it states that no other fee, charge, or commission other than those authorized therein may be charged.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As to Section 15-39-770, again, such provision allows for a fee to the officer making a judicial sale of real estate "for services rendered in making such sales", for "paying over the proceeds of such sales to the parties entitled thereto" and "for rendering all services in connection with such sales for which a commission fee is authorized by law". According to your letter, the successful bidder at the sale of real estate to satisfy a judgment, who was the owner of the judgment, will not pay over any funds since such would amount to him paying himself. Therefore, there apparently would be no "paying over the proceeds of such sales to the parties entitled thereto. However, Section 15-39-770 allows a fee "for services rendered in making such sales" and "for rendering all services in connection with such sales." As a result, it appears that the sheriff would be entitled to a fee for such services.

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An opinion of this office dated November 8, 1976 dealt with the question of the amount of fees to be paid to a master when a mortgagee buys in the property after a mortgage foreclosure. Reference was made to a statute, former Code Section 27-201, which allowed fees "on moneys passing through his hands by sales or otherwise..." The opinion commented that inasmuch as the mortgagee bought the property at the sale at issue, "...no money passed through the hands of the master, and no fees for the sale are collectible by him." See also: Op. Atty. Gen. dated November 18, 1975 (referencing the phrase "moneys passing through his hands", it was concluded that a master in equity may not charge a commission on those moneys which do not pass through his hands.)

This 1976 opinion was cited in another opinion of this office dated December 12, 1984 which dealt with the question of what fees should be collected where a clerk of court had conducted a judicial sale. Reference was made to Section 15-39-770 noting that it did not contain the limiting language such as that cited in the 1976 opinion regarding "moneys passing through his hands". Instead, the language simply states that "[t]he officer making judicial sales of real estate may charge for services rendered in making such sales and in paying over the proceeds...and for rendering all services in connection with such sales..." The opinion concluded that "[t]his language indicates that the fee should not be restricted to sales involving the passing of money through the hands of the clerks of court...Therefore, Section 15-39-770 appears to require a fee to be paid for the purchase of property by mortgagees at judicial sales conducted by clerks of court." It did not indicate that there had to be a finding of "paying over the proceeds" in order to receive the fee provided.

Consistent with these prior opinions, in the opinion of this office, the sheriff who conducted the sale in the situation prompting your request would be entitled to the fee authorized by Section 15-39-770. While apparently there was no "paying over the proceeds of such sales to the parties entitled thereto", Section 15-39-770 allows a fee "for services rendered in making such sales" and "for rendering all services in connection with such sales." Therefore, it appears that the sheriff would be entitled to a fee for such services.

As to the fee authorized by Section 23-19-10, again, such provision states that "[t]here must be paid as commissions on all monies collected by the sheriff..." An opinion of this office dated September 25, 1985 stated that

...costs and fees are in the nature of penalties and the statutes granting them have always been strictly construed...In other words,...statutes providing for fees are to be strictly construed against allowing a fee by implication, with respect to both the fixing of the fee and the officer entitled thereto....

Another opinion of this office dated October 11, 2000 similarly asserted that "statutes providing for fees are to be strictly construed against allowing a fee by implication, with respect to both the fixing of the fee and the officer entitled thereto...." See also: Op. Atty. Gen. dated January 27, 2000 (fee statutes must be strictly construed against the charging of fees not expressly authorized).

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The October 11, 2000 opinion noted that other prior opinions had concluded that "the rule of strict construction is to be applied to the sheriff's ability to collect fees pursuant to Section 23-19-10." That opinion stated that

...a strict reading of the statute is required by the tenets of statutory interpretation; and, that such would support the conclusion that the verb "collect" is intended to be active, requiring more than the mere facilitation of the remittance of a debt.

The previously referenced opinion of this office dated November 18, 1975 similarly indicated that "...a sheriff is only entitled to commissions on that amount which he ordinarily collects and pays over."

As referenced above, the Sheriff's office had executed on and conducted a sale of real estate to satisfy a judgment where the successful bidder at the sale was the owner of the judgment who bid the full amount of the judgment in order to stave off other potential bidders. The successful bidder will not be actually paying the funds to take title to the property since that would amount to him paying himself. Consistent with the above, in the opinion of this office, there were no monies "collected" by the sheriff in such instance, and a result, no fee or commission would be authorized by Section 23-19-10 in such circumstances. Moreover, as to this particular case, as referenced by Section 15-39-770, "[n]o fees, charges or commissions, other than those herein authorized, may be charged by the officer making such sales,...." Such provision also appears to argue against any further fee in this instance.

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