



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 29, 2003

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
P. O. Box 21428
Columbia, South Carolina 29221-1428

Dear Jeff:

In a letter to this office you questioned the practice of jails charging fees, such as booking fees to cover administrative costs associated with the booking process, or a clothing fee to cover the costs associated with cleaning and replacing clothing for inmates. You questioned the authority of a sheriff or county government that operates a jail to establish fees by policy or county ordinance to include such type items.

In your letter you referenced that pursuant to S.C. Code Ann. Section 24-13-80 (Supp. 2002), the General Assembly has specifically provided for the payment of certain costs by prisoners. Pursuant to that provision, the administrator of a detention facility, including county and municipal jails, may establish rules to authorize deductions from money credited to inmate accounts to:

- (1) repay the costs of:
 - (a) public property wilfully damaged or destroyed by the inmate during his incarceration;
 - (b) medical treatment for injuries inflicted by the inmate upon himself or others;
 - (c) searching for and apprehending the inmate when he escapes or attempts to escape. The costs must be limited to those extraordinary costs incurred as a consequence of the escape; or
 - (d) quelling a riot or other disturbance in which the inmate is unlawfully involved;
- (2) defray the costs paid by a municipality or county for elective medical treatment for an inmate, which has been requested by him, if the deduction does not exceed five dollars for each occurrence of treatment received by the inmate at the inmate's request....

Other provisions also are relevant to your inquiry. For instance, S.C. Code Ann. Section 24-13-930 (c) (1989) provides as to inmates under a work/punishment program for inmates confined

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in local correctional facilities, there may be deductions from their earnings "...not less than five dollars nor more than ten dollars per workday to offset the cost to the local facility providing food, lodging, supervision, clothing, and care to the inmate." With regard to your question regarding fees for matters such as clothing for prisoners, statutory provisions exist that mandate that counties provide certain essential requirements for prisoners. See, e.g., S.C. Code Section 24-5-80 (1989) (counties to provide blankets and bedding to prisoners); S.C. Code Ann. Section 24-7-60 (1989) (counties to "...diet...all convicts upon whom may be imposed sentence of labor"). Also, there is the general requirement that medical services be provided prisoners in county operated facilities. See: Op. Atty. Gen. dated January 26, 1993. The general fee schedule of a sheriff is set forth in S.C. Code Ann. Section 23-19-10 (1989).

I am unaware of any general authority for sheriffs to establish separate fees such as those described in your inquiry. An opinion of September 28, 1985 commented that with regard to a county's revision of sheriffs' fees, counties would not be so authorized. Another opinion of this office dealing with sheriff's fees dated September 25, 1985 commented 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."

As to the authority of any county to provide for fees to be collected by jails for various purposes such as those outlined by your letter, the test for resolving the issue of the validity of a county ordinance is set forth in Hospitality Association of S.C. v. County of Charleston, 320 S.C. 219, 224, 464 S.E. 113, 116-117 (1995) where the supreme court stated:

determining if a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends. However, if the local government had the power to enact the ordinance, the next step is to ascertain whether the ordinance is inconsistent with the Constitution or general law of the State.

Therefore, in examining your question, the questions must be asked as to whether there is any authorization for the county to adopt such an ordinance. The next step is to consider whether any such ordinance or proposed ordinance is inconsistent with State law. As to the situation you addressed, there is no apparent specific authorization for such fees and any ordinance in such regard would appear to be inconsistent with State law.

The test for preemption is set forth in Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 94, 530 S.E.2d 890,893 (2000) where the supreme court stated that "(i)n order to preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." The numerous statutory provisions authorizing specific fees for the sheriff and designating certain fees to be collected from prisoners appear to indicate legislative intent that no other fees are to be collected unless there is further legislative authorization for such. Moreover, in

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responding to your question, reference may be had to the provisions of Article VIII, Section 14 of the State Constitution which provide that a county cannot adopt an ordinance inconsistent with State general law.

As set forth, the legislature has specifically provided for the payment of certain fees and reimbursements by inmates. Also, there are general duties of counties to provide for inmates in specified areas. It appears, therefore, that the State has preempted the matter of fees or reimbursements to be collected from inmates. As a result, while only a court could declare any particular ordinance invalid, it would be very questionable as to whether sheriffs or counties are authorized to collect from prison inmates separate fees or reimbursements beyond those specifically authorized by the legislature. You may wish to consider a declaratory judgment to resolve this matter with certainty.

If there are any questions, please advise.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Richardson", with a long horizontal flourish extending to the right.

Charles H. Richardson
Senior Assistant Attorney General