



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 27, 2000

Elizabeth H. Robinson, Staff Attorney
Office of the Sheriff, York County
Moss Justice Center
1675-2A York Highway
York, South Carolina 29745-7430

Dear Ms. Robinson,

Thank you for your letter of August 12, 1999, to Attorney General Condon, which has been referred to me for a response. You ask for an opinion on whether the York County Sheriff's Office may charge a fee for the service of process for a defendant in criminal proceedings.

South Carolina Code Section 23-19-10 states the schedule of fees that a sheriff's office may charge for the performance of some of their duties. The statute begins: "Except as otherwise expressly provided by general law, the fees and commissions of sheriffs are as follows:" (emphasis added). The statute presents a detailed list of the circumstances in which the sheriff is authorized to charge a fee, including for the service of civil process. The statute ends: "The provisions of this section do not apply to criminal processes or cases."

Our Supreme Court has consistently recognized that costs "...are in the nature of penalties and the statutes granting them have always been strictly construed." State et al. v. Wilder, 198 S.C. 390, 394, 18 S.E.2d 324 (1941). Governing the fees and costs of public officers generally, Section 8-21-10 states, "The several officers named in ... Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter... and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated." Moreover, Section 8-21-30 of the Code requires that if a Sheriff "improperly" charges a fee, he may be liable for "ten times the amount so improperly charged" Thus, given the rule that fee statutes must be strictly construed against the charging of fees not expressly authorized, the specific prohibition in Section 8-21-10 against the charging of fees not enumerated in the statutes, and the absence of any express authority to charge a fee for service of process for a criminal defendant, it is the opinion of this Office that a sheriff may not charge a criminal defendant for serving subpoenas in the proceedings against him.

This letter is an informal opinion only. It has been written by a designated Senior Assistant

Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. D. Cook', written in a cursive style.

Robert D. Cook
Assistant Deputy Attorney General