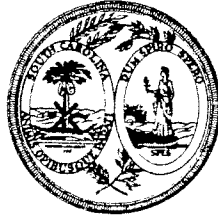


6995 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

October 11, 2000

Sheryl Sisk Schelin, Esquire.  
Horry County Staff Attorney  
1001 Second Avenue  
Conway, South Carolina 29526

Dear Ms. Schelin:

Thank you for your letter of September 12, 2000 which was referred to me for response. In your correspondence you ask for clarification from this office of S.C. Code Ann. § 23-19-10(a).

As an example of your concern, you related the following:

The Horry County Sheriff's office has recently put forth a great deal of effort in attempting to obtain closure on outstanding judgments filed with that office for execution. Section 23-19-10(a) provides for a percentage of "all monies collected" to be remitted to the Sheriff's Office. Recently, questions have arisen regarding a situation wherein the efforts of the Sheriff's Office result in the payment of the judgment, but the judgment is not actually handed over to the Sheriff's Office.

In a recent example, the Sheriff's Office served the writ of execution and expended some considerable effort in obtaining satisfaction on the outstanding judgment. Following unsuccessful attempts to collect the judgment, the writ was returned nullo bono. Sometime thereafter, a deputy sheriff discovered the judgement debtor was refinancing his residence and placed a telephone call to the debtor's attorney. The judgement was paid, but the attorney refused to remit the collection fee, stating that the sheriff's office had not "collected" the judgment, per se, and thus was not entitled to the judgement.

As you know, S.C. Code § 23-19-10(a) provides:

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

*Re: Aust Letter*

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 issue seems to turn on the meaning of "collected" as contained in the statute. Is the facilitation of collection of a debt by telephone enough to constitute "collection" as contained in the aforementioned statute, thereby allowing the sheriff to receive a percentage of the amount of monies collected? When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Further, "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 . . ." 67 C.J.S., Officers, § 224. See Also, Op. Atty. Gen. (August 7, 2000). This Office has previously opined that the rule of strict construction is to be applied to the sheriff's ability to collect fees pursuant to §23-19-10, as it existed in 1985. Op. Atty. Gen. Op. No. 85-106 (Opinion cited in your letter).

You indicate that the Sheriff's Office in Horry County believes, "a broader 'plain English' reading of the relevant section would include the efforts undertaken by that office to compel a judgment debtor to satisfy the judgment." You concede, however, that "a strictly literal reading of the word 'collected' could support the debtor's position."

It is my opinion, based on our research into your question, 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. Black's Law Dictionary defines "collect" as follows: "To gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund; to assemble. To receive payment. To collect a debt or claim is to obtain payment or liquidation of it, (emphasis added) either by personal solicitation or legal proceedings." This conclusion, I believe, is further supported by the provisions of S.C. Code Ann. Title 15, Chapter 39 related to Civil Remedies and Procedures - Executions and Judicial Sales Generally. §15-39-100 provides that "[e]xecutions shall not bind the personal property of the debtor, but personal property shall only be bound by actual attachment or levy thereon for the period of four months from the date of such levy." Attachment is defined as "the act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law." LaRosa v. Johnston, 328 S.C. 293, 493 S.E.2d 100 (Ct. App. 1997). Levy has been defined as "[t]o assess; raise; execute; exact; collect; gather; take up; seize." United States v. Southern Growth Industries, 251 S.C. 404, 162 S.E.2d 849 (1968).

Other jurisdictions have addressed similar questions regarding what are referred to as "poundage fees". Such is defined as "a fee awarded to the sheriff in the nature of a percentage

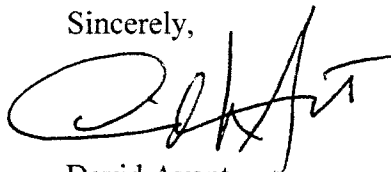
Ms. Schelin  
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commission upon monies recovered pursuant to a levy or execution or attachment." See, *Black's Law Dictionary*. The Maryland State Court has held that "poundage" fees require law enforcement to take actual possession of the personalty in order to be entitled to a percentage of the debt. Imbach, Inc. v. Deegan, 117 A.2d 864, (1955). Other authority provides that a sheriff's right to fees accrues upon the rendition of the service as described in the poundage statute. If the sheriff does not perform the act necessary to earn the fee, he is not entitled to such fee. "Under a statute providing a fee for levying a writ of execution and the return thereof, a sheriff is not entitled to charge the fee if no levy has been made under the return. And although it may not be necessary that there be a sale of the property, under a statute allowing poundage fees for levying an execution, an actual seizure of the property has been held necessary in order to entitle a sheriff, to poundage fees . . ." 70 AM. JUR. 2D *Sheriffs, Police, and Constables*, § 83 (1987).

Whether an actual taking or seizing of property or monies is necessary to establish the sheriff's right to a percentage based commission depends on the terms contained in S.C. Code Ann. § 23-19-10. Based on the foregoing, it is my opinion that the legislature would require more of the sheriff than a phone call or merely performing some act which facilitates the creditor collecting a debt. I believe, at the very least, the Sheriff would be required to "attach" or "levy" on the property such that it would be bound according to §15-39-100. This is my interpretation, but I strongly suggest your office seek legislative clarification if necessary.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been scrutinized by the Attorney General nor published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'DAVANT', with a large, stylized initial 'D'.

David Avant  
Assistant Attorney General