



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 23, 2001

Roger P. Roy, Jr., Esquire
North Myrtle Beach City Attorney
1015 Second Avenue South
North Myrtle Beach, South Carolina 29582

Re: Court Costs

Dear Mr. Roy:

You have requested from this Office "...an opinion as to whether or not a municipality can dismiss a charge and keep the court cost."

Generally, court costs in criminal cases can only be imposed when specifically authorized by statute. This general proposition holds true for convictions as well as acquittals. See ATTY. GEN. OP. (Dated April 16, 1979). See Also Melton v. State, 1 So.2d 920 (Ala.App.Ct. 1941).

My research has revealed only one instance in which the South Carolina Code authorizes the assessment of court costs upon a dismissal of a criminal charge. In S.C. Code Ann. §34-11-70(c), our fraudulent check laws provide that:

Any court, including magistrates, may dismiss any prosecution initiated pursuant to the provisions of this chapter on satisfactory proof of restitution and payment by the defendant of all administrative costs accruing not to exceed forty-one dollars submitted before the date set for trial after the issuance of a warrant.

I know of no other statutory authority which would allow the imposition of court costs after a finding of not guilty or a dismissal of the underlying criminal charge. See (for example) S.C. Code Ann. §14-1-208 ("... a person who is convicted of, or pleads guilty or nolo contendere to, or forfeits bond for an offense tried in municipal court must pay an amount equal to 100 percent of the fine imposed as an assessment ..."). Further, it does not appear that an individual municipality could impose additional costs on a criminal defendant without running afoul of the South Carolina Constitution's requirement for a uniform judicial system. See ATTY. GEN. OP. (Dated June 19, 1984). See Also ATTY. GEN. OP. (Dated March 31, 1988) (Surcharge on all uniform traffic tickets by a particular municipality to defray training costs for police of doubtful constitutionality).

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Additionally, imposing costs on a person against whom criminal charges have been dismissed may raise due process concerns pursuant to the Fifth and Fourteenth Amendments of the U.S. Constitution. Giaccio v. State of Pennsylvania, 382 U.S. 399, 86 S.Ct. 518 (1966); City of Cuyahoga Falls v. Coup-Peterson, 707 N.E.2d 545 (Ohio App.Ct. 1997); Thomas v. State, 418 S.W.2d 792 (Ark. 1967) (assessing court costs against defendant after dismissal of indictment is a violation of due process of law).¹

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 personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. K. Avant", written over a horizontal line.

David K. Avant
Assistant Attorney General

DKA/an

¹ Giaccio appears to leave room for the imposition of costs in cases such as S.C.Code Ann. §34-11-70 where a clear standard is established for the imposition of the costs.