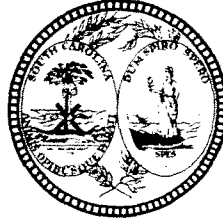


6088 February



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

February 3, 1997

The Honorable Glenn G. Reese  
Senator, District 11  
117 Sun Valley Drive  
Inman, South Carolina 29349

Dear Senator Reese:

A constituent of yours has raised a question. According to your constituent's letter, a local wrecker service sent a bill to the Sheriff's Office for \$19,000 for the storage of abandoned vehicles. Apparently, the wrecker company had an existing contract with the county for such services. It is further indicated in your constituent's letter that County Council refused to pay this bill and that the money for the bill was taken from the Sheriff's DSS account for the enforcement of child support orders. Your constituent states that such funds are provided to the Sheriff's DSS account by the Department of Health and Human Resources pursuant to a contract. Your constituent's question is summarized as follows:

[w]e need to know if this money can be moved from the DSS fund to pay storage of vehicles that should not have been stored for this long period of time.

S.C.Code Ann. Sec. 43-5-235 provides as follows:

[t]o the extent permitted by federal law, the department may enter into annual agreements with county governments, clerks of court, sheriffs, and other law enforcement entities having jurisdiction in that county to reimburse and to pay federal financial participation and incentives pursuant to the terms of the agreement to the appropriate contracting entity for a

portion of the cost of developing and implementing a child support collection and paternity determination program for:

(1) securing support for persons receiving state public assistance and reimbursement of medical assistance from the legally responsible spouse or parent of assistance recipients;

(2) establishing paternity of children born out of wedlock who are receiving aid to families with dependent children and to secure support for them;

(3) all children who have sought assistance in securing support whether or not they are eligible for aid to families with dependent children and regardless of the economic circumstances. To the extent permitted by federal law, a fiscal incentive and federal financial participation must be paid to the department and provided to the entity providing the service for the collection and enforcement of child support obligations. These monies must be paid to the appropriate county treasurer or county finance office on a monthly basis and deposited into a separate account for the entity providing the service for the exclusive use by this entity for all activities related to the establishment, collection, and enforcement of child support obligations for the fiscal year in which the payments are earned and may be drawn on and used only by the entity providing the service for which the account was established. Monies paid to the contracting entity pursuant to this section may not be used to replace operating funds of the budget of the entity providing the service. Funds in the special account not encumbered for child support activities revert to the general fund of the county at the end of the fiscal year in which they were earned. Each local entity shall enter into a support enforcement agreement with the department as a condition of receiving the fiscal incentive and federal financial participation. To the extent that fiscal incentives are paid to the department and are not owed under the agreement to the contracting entity, these fiscal incentives must be reinvested in the department's Child Support Enforcement Program to increase collections of support at the state and county levels in a manner consistent with the federal laws and regulations governing incentive payments.

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A Circuit Court decision, McCrea v. Williamsburg County Council, 94-CP-45-173 (October 18, 1994), stated that "[t]he intent of [the] legislature was to allow the department to enter into an annual agreement with county governments, Clerks of Court, sheriffs, or other law enforcement entities having jurisdiction in the county for the purpose of carrying out the legislation and the contract." (emphasis in original). This decision construed the particular contract in question between the Sheriff of Williamsburg and DSS as follows:

[t]he clear intent of that portion of the contract is to prevent these monies from being used to diminish the amount of the operating budget which is the obligation of the county or the entity itself, and to provide these funds as additional or supplemental funds for the purposes set out in the statute and contract. The DSS contract does not place any obligation on Williamsburg County, and the contract is solely between Sheriff McCrea and DSS, as contemplated in Section 43-5-235 of our Code of Laws.

Of course, this Office possesses no authority to investigate factual matters and issues of fact cannot be determined in an Opinion of this Office. Op. Atty. Gen., December 12, 1983. I am certainly not aware of the facts in this particular instance, such as the language of the particular contract which may have been operative or the circumstances surrounding this situation. I can only point your constituent to the relevant law (§ 43-5-235) and would suggest that the County Treasurer or the state agency who may have been a party to the contract (perhaps DSS) be consulted for further information.,

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/ph