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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 15, 1997

The Honorable Phil P. Leventis
Senator, District No. 35
Box 1592
Sumter, South Carolina 29151-1592

Re: Informal Opinion

Dear Senator Leventis:

You have sought advice concerning the "practical implementation" of S.616, R.201 (Act No. not yet assigned). You note that S.616 provides that, effective July 1, 1997, Code Sections 14-1-206, -207, and -208 are amended with respect to the percentage of a criminal fine imposed as an assessment, and that Code Sections 14-1-206 and -207 now require an assessment of 100% to be imposed, changing the percentages of 62%, 88% and 52% respectively. Furthermore, Code Section 14-1-211 imposes a $25 surcharge on certain cases. You also state that you

> ... have reviewed the elaborate instructions and forms which have been supplied to the Summary Courts by the Court Administration. It appears that the Court Administration had two week's notice and the Summary Courts had one day's notice in which to make adjustments to these new figures. Sumter's Summary Court had contacted me, and they are trying their best to get the new requirement in force, but there are several obstacles which make it impossible for the system to comply effective July 1, 1997 for collection on July 30.
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> 1. The cases still to be tried in which the arrests occurred prior to July cannot be fined retroactively. Therefore, those fines and assessments must remain the same until they are satisfied.

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Request Letter

2. The law enforcement officers, especially the highway patrol, are on the road and will have to have time to begin registering the new amounts as bonds on the individual tickets which they issue to the Defendants. Many Defendants just send in the money according to the bond set by the officer and the Court would have no opportunity to advise them differently.

3. The County computer specialist says that it will probably take at least a month for them to program all of the fines and particular categories so that the cash register and reports will record and issue reports correctly.

4. Since the law is effective as of July 1, 1997 the County is concerned that the State may begin expecting to collect their increased assessments and surcharges at the end of July. This would put the County in the position of having to fund a 12% assessment per case and 25% surcharge to the State out of the County coffers.

5. It has also been called to my attention that the statewide repercussions will be enormous given the fact that many Magistrates write out their own separate checks from the individual fines that they collect. Charges will take time to adjust to.

... I am told that when fines have been adjusted in the past, there was a two month adjustment period extended before the implementation was expected in relation to any change in the collections of funds.

LAW / ANALYSIS

In November, 1996, a Constitutional Amendment was, overwhelmingly approved by the people, establishing a Victims and Witnesses' Bill of Rights. Such Amendment is presently awaiting ratification by the General Assembly. In addition, S.616 (R.201) was enacted during the past session of the Legislature and is designed to further implement the rights of victims and witnesses. The express intent of the General Assembly is to "ensure that all victims and witnesses to a crime are treated with dignity, respect, courtesy and sensitivity ... ." Section 3 further specifies in considerable detail the obligations,

responsibilities and duties of persons who are part of the criminal justice system as well as employers to victims and witnesses. Section 4, 5, and 6 of the Act increases assessments charged a defendant in a criminal case as a source of funding for these new (and dramatically increased) responsibilities and duties. The Title of the Act reflects the Legislature's intent in this regard, reading in pertinent part as follows:

> ... TO AMEND SECTION 14-1-206, AS AMENDED, RELATING TO CERTAIN GENERAL SESSIONS COURT ASSESSMENTS, SO AS TO REVISE THE AMOUNT OF THE ASSESSMENTS AND THE DISBURSEMENT OF THE ASSESSMENTS; TO AMEND SECTION 14-1-207, AS AMENDED, RELATING TO CERTAIN MAGISTRATE'S COURT ASSESSMENTS, SO AS TO REVISE THE AMOUNT OF THE ASSESSMENTS AND THE DISBURSEMENT OF THE ASSESSMENTS; TO AMEND SECTION 14-1-208, AS AMENDED, RELATING TO MUNICIPAL COURT ASSESSMENTS, SO AS TO REVISE THE AMOUNT OF THE ASSESSMENTS AND THE DISBURSEMENT OF THE ASSESSMENTS; TO AMEND THE 1976 CODE BY ADDING SECTION 14-1-211 SO AS TO PROVIDE CERTAIN SURCHARGES TO BE IMPOSED FOR CONVICTIONS OBTAINED IN GENERAL SESSIONS, MAGISTRATE'S, AND MUNICIPAL COURTS, AND TO PROVIDE FOR THE DISBURSEMENT OF THESE SURCHARGES; ... .

Sections 14-1-206 and 14-1-207 are amended to increase assessments "of one hundred percent of the fine imposed" and Section 14-1-208 is amended to increase the assessment to 64% of the amount of the fine. Section 9 expressly make all Sections of the Act, except Section 1, 2, and 3 (including the increase and assessment provisions) effective July 1, 1997.

Several principles of statutory construction are relevant here. First and foremost, is the time-honored tenet of interpretation that the primary guideline to be used in the interpretation of statutes is to ascertain and give effect to the intention of the legislature. Belk v. Nationwide Mut. Ins. Co., 271 S.C. 24, 244 S.E.2d 744 (1978). A statute as a whole must receive a practical, reasonable and fair interpretation, consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The words used therein should be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). The

interpretation should be according to the natural and obvious significance of the wording without resort to subtle and refined construction for the purpose of either limiting or expanding the statute's operation. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). Clearly, different portions of the same act are not prevented from taking effect on different days; different effective dates may be prescribed by express language or by necessary and reasonable implication. Tacorante v. People of the State of Colorado, 624 P.2d 1324 (Colo.1981).

Based upon these rules of statutory construction, there can be no question that Sections 4, 5, 6 and 7 (the provisions with which you are concerned) are effective on July 1, 1997. The question becomes, however, how a court faced with the question of immediate enforcement of the collection of the new assessment might look at the issue.

With respect to applying the new assessment to offenses committed prior to enactment of the statute, I refer you to a case decided by the Delaware Supreme Court, In The Matter of the Petition of the State of Delaware for a Writ of Mandamus, 603 A.2d 814 (Del.1992). There, the State of Delaware petitioned for a writ of mandamus to retroactively impose an increased assessment against the defendant. The new legislation was described by the Court as follows:

> [t]here are two separate legislative enactments which are the subject of this dispute. On May 14, 1990, the Governor signed an act, effective that date, that created the Drug Rehabilitation Treatment and Education Fund. ... That legislation, inter alia, required the courts of this State to impose upon any defendant convicted of specific drug offenses an assessment of fifteen percent of any penalty, fine or forfeiture imposed. On July 20, 1990, the Governor signed into law another act, effective that same day, that increased the Victim Compensation Fund assessment from fifteen percent to eighteen percent of any fines, penalties, and forfeitures imposed by the court in any criminal case.

Both acts were enacted after the defendant's offenses were committed.

The Court refused to enforce the new legislation against the defendant because of the Ex Post Facto Clause. Its analysis consisted in part of the following statement:

> [t]he ex post facto clauses of the United States Constitution preclude Congress or the States from enacting any law which

> imposes a punishment for an act which was not punishable at the time it was committed or imposes punishment additional to that then prescribed. DiStefano v. Watson, Del.Supr., 566 A.2d 1 (1989). A law violates the ex post facto prohibition, when it "changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." Id. at 5 (citing Calder v. Bull, 3 U.S. 386, 390, 1 L.Ed. 648 (1798)). However, both this Court and the United States Supreme Court have recognized that certain laws may be accorded retroactive effect without running afoul of the ex post facto doctrine. These include statutes not criminal in nature or those producing changes which are procedural or administrative and not substantive. See, e.g., Harisiades v. Shaughnessy, 342 U.S. 580, 72 S.Ct. 512, 96 L.Ed. 586 (1952); DiStefano v. Watson, Del.Supr., 566 A.2d 1 (1989).
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> ... The assessments in question may be deemed remedial in nature to the extent that they serve societal goals other than deterrence or punishment of the offender. However, because they are annexed to a criminal conviction and cannot be the subject of a separate civil proceeding ... they are subject to an ex post facto restriction. It is clear that these surcharges cannot be viewed as civil penalties as long as they are connected to, and activated only by, a criminal conviction. Thus, they are part of the "law annexed to the crime", Calder, 3 U.S. at 390, and limited by the law in effect when the offenses were committed. The retroactive imposition of later adopted statutory increases violates the ex post facto clause.

Thus, based upon this reasoning, a court would probably not apply the new statute's assessment provisions to offenses committed prior to its enactment.

Moreover, a court possesses discretion to refuse a mandamus even where there exists a clear legal right. The writ of mandamus lies solely within the discretion of the court. In Interest of Lyde, 284 S.C. 419, 327 S.E. 70 (1985). A court, in other words, possesses the discretion not to grant a writ of mandamus if such issuance "... 'will introduce confusion and disorder,' or "'where it is manifestly improper ... .'" State v. Comptroller General, 4 S.C. 185 (1872).

In addition, a court may take into account equitable considerations as a ground for denial of the writ. 55 C.J.S., Mandamus, § 10. Mandamus will not issue when a valid reason for not performing the act sought to be coerced is presented by a public official. Id. Courts will also listen intently where a public officer presents the argument that immediate performance of a duty requires an "excessive burden", is inequitable, or is impossible. Id. The "writ of mandamus will not lie where the duty, the performance of which is sought, is impossible of performance." Id. at § 14.

As importantly, a court, as part of the exercise of its discretion, may delay compulsion of the public officer in order to allow him to comply with a new duty even where a mandamus is deemed warranted by the court. The Court can, in other words, look to the good-faith efforts of the officer in attempting to comply with the statutory requirement as quickly as humanly possible as well as the time needed for such compliance. A good example of the Court's willingness to delay implementation in this regard to allow sufficient time for compliance is State ex rel. Pedrolie v. Kirby, 163 S.W.2d 964 (Mo.1942). There, the Missouri Supreme Court stated:

> [t]he fact that the commission in this case has not completed its organization and is not equipped immediately to hold hearings and make decisions is not a sufficient ground for refusing the peremptory writ. Where a respondent lacks the means to comply immediately with relator's demand, that fact will not require a denial of the writ, for the court, in ordering it to issue, may allow the respondent reasonable time to comply with relator's demand. State ex rel. Gwynn v. Citizens' Tel. Co., 61 S.C. 83, 39 S.E. 257, 55 L.R.A. 139, 85 Am.St.Rep. 870.

The case cited by the Missouri Court in Gwynn is a South Carolina decision, where our Supreme Court emphasized the clear power of the Circuit Court "in ordering the mandamus to issue, ... [to] make suitable provision for allowing respondent reasonable time, if such shall be shown to be necessary, to comply with the relators demand." 61 S.C. at 98.

A court, particularly the Supreme Court, is in a particularly unique and favorable position to take into account the concerns you raise in your letter with respect to this legislation because the new law has such a direct and immediate impact upon the court system. Article V of the State Constitution requires a unified judicial system and § 4 of Article V designates the Chief Justice as the administrative head of the unified judicial system.

In summary, it is my opinion that R.201, S.616 mandates that the effective date of Sections 4, 5, 6 and 7 (about which you have expressed concerns) is July 1, 1997. However, the fact that the Act is already effective does not necessarily mean that a court would grant immediate compulsory relief if faced with the issue. The Court could, and probably would, take into account the kinds of practical problems associated with implementation which you have described. A court probably would apply the Act only to offenses committed after the effective date and not attempt to impose the new assessments retroactively. In short, so long as public officials are in good faith seeking to comply with the statute as quickly as is possible under the circumstances, a court would certainly take such effort into account and not impose any penalties for whatever reasonable delay was necessary as a practical matter to implement the new legislation.

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

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph