



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 6, 1997

Kenneth G. Goode, Esquire
Fairfield County Attorney
P.O. Box 488
Winnsboro, SC 29180

Dear Mr. Goode:

You have requested the advice of this Office as to whether the Clerk of Court may retain personally County deed stamp taxes under the circumstances described below. According to your letter, the Clerk and County Council had an agreement by which the deed stamp tax would be deposited into the general fund, but the tax would then be paid from that fund to the Clerk as a subsidy to her salary. Subsequently, due to changes in a computer system, the Clerk began depositing deed taxes into her checking account and then writing a check to herself when deed stamps needed to be purchased. The following conclusions are based upon this information, but we express no opinion as to the accuracy of the information as factual investigations are beyond the scope of opinions of this Office. Ops. Atty. Gen. December 12, 1983.

The above monies should be deposited with the County and not be retained by the Clerk as personal compensation. Former S.C. Code Ann. § 12-25-30 (1976), prior to its repeal in 1996, plainly states that the county documentary tax required by chapter 25 of Title 12 of the Code "shall be deposited into the General fund of the County."¹ Act No. 458, Part II §57, 1996 S.C. Acts ___ (repealing legislation). Section 12-24-90 (Supp. 1996), which was also included in Act 458 but not referenced in your letter, now

¹ The "...primary function in interpreting a statute is to ascertain the intention of the legislature." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E. 2d 134 (1986). "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning." Id.

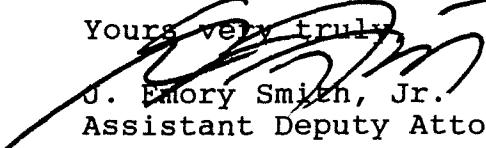
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provides for a deed recording fee composed of State and County portions which is to be credited to the State and County funds as provided therein. Nothing in §12-24-90 suggests that its fee may be personally retained. Although different fees are involved, these conclusions about §12-24-90 and former §12-25-30 are consistent with a previous opinion of this Office which concluded that the safest legal course of action for clerks of court would be for them not to retain the compensation from the sale of State Tax Commission documentary stamps. Ops. Atty. Gen. (January 8, 1987).

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

If you have further questions, please let me know.

Yours very truly


J. Emory Smith, Jr.

Assistant Deputy Attorney General

JESjr