

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970
FACSIMILE 803-253-6283

October 25, 1991

James L. Bridges, Esquire
Deputy County Attorney
County of Charleston
2 Courthouse Square
Charleston, South Carolina 29401-2263

Dear Mr. Bridges:

Your letter to Patty Petway dealing with amendments to State statutes providing for an increase in the fees and assessments collected by the summary courts has been referred to me for response. In your letter you stated:

Currently, the County does not collect any fines when:

1. bonds are not set high enough to cover the minimum fine, plus assessments/fees upon forfeiture; and
2. fines imposed by the Judges are not adequate to cover the minimum fine, plus assessments/fees.

To avoid any loss of funds, County Government could submit applicable assessments to the appropriate agencies after the minimum fine has been collected. For example, if the fine imposed is \$68.00 and the minimum fine (County portion) is \$50.00, applicable assessments/fees would be levied against the remaining balance of \$18.00. This balance is insufficient to cover all applicable assessments in the amount of \$29.25.

Mr. Bridges
Page 2
October 25, 1991

Based upon my review of the most recent Appropriations Act, Act No. 171 of 1991, two provisions dealing with assessments relative to summary courts were included. Such provisions amended Sections 14-1-210 and 24-23-210 of the Code to read:

Every conviction for an offense in the magistrates' courts or municipal courts of this State, except for a nonmoving traffic offense, must be assessed a cost of court fee of fourteen dollars. Every conviction for a nonmoving traffic offense in the magistrates' courts or municipal courts of this State must be assessed a cost of court fee of seven dollars and seventy-five cents. The cost of court fees set forth in this section may not be suspended, except for traffic offenses of an expired tag on a vehicle and an expired inspection sticker, and must be collected by the municipal and magistrate's court regardless of the amount of fine or bond imposed. No cost of court fee may be assessed in municipal or magistrate's court where a term of imprisonment only is imposed as the punishment.

When a person is convicted, pleads guilty or nolo contendere, and is sentenced to payment of a fine, or when a person forfeits bond, including the assessment provided in this section, to an offense within the jurisdiction of a municipal, recorder's, or magistrate's court other than a nonmoving traffic violation, there is imposed an assessment, in addition to any other costs or fines imposed by law, in the sum of nine dollars. A person posting bond for an offense shall post the nine dollar assessment at the same time. If the person is not convicted of the offense with which he is charged, the assessment must be returned to him at the same time his bond is returned. If the person has not posted bond and is convicted or pleads

Mr. Bridges
Page 3
October 25, 1991

guilty or nolo contendere, the nine-dollar assessment must be paid to the recorder's, magistrate's, or municipal court at the time a sentence is imposed. (emphasis added)

A prior opinion of this Office dated January 8, 1990 quoted from the South Carolina Bench Book for Magistrates and Municipal Court Judges where it is stated that as to the assessment authorized for the Criminal Justice Academy pursuant to Section 23-23-70 of the Code

(t)he fee is collected in addition to the fine imposed, even if the fine is suspended.

As to the assessment provided by Section 24-23-210, the opinion stated

Such provision is absolute in providing for the referenced assessment when the sentence imposed consists of a fine ... Therefore, it appears that such amounts should be collected whenever a fine is imposed either as part of the original sentence or a suspended sentence unless, of course, a circuit court waives or suspends all or part of an assessment.

Such conclusions are supportive of the construction that the assessments are mandatory where applicable. Indeed, the statutes, Sections 14-1-210 and 24-23-210 so indicate. (Every conviction ... must be assessed a cost of court fee When any person is convicted ... there is imposed an assessment)

As to circumstances where the bonds are not set high enough to cover minimum fines plus assessments, consideration should be given to increasing the bonds to anticipate the assessments. For your information, in 1990 the State Highway Patrol revised its bond schedule so as to increase the bonds being collected. It is my understanding that such was done at least in part due to the fact that bond amounts previously being collected were not sufficient for the fines plus assessments. As to your statement that the fines are not adequate to cover the minimum fines plus assessments, as referenced above, the assessments are typically considered

Mr. Bridges
Page 4
October 25, 1991

as being in addition to any fine imposed. Again, the assessments provided by Sections 14-1-210 and 24-23-210 are mandatory where applicable.

With kind regards, I am

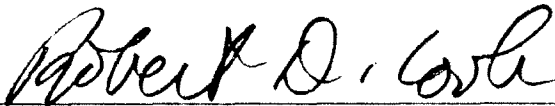
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions