

# The State of South Carolina



## Office of the Attorney General

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September 13, 1991

The Honorable Carolyn C. Turner  
Barnwell County Clerk of Court  
Barnwell County Courthouse  
Post Office Box 723  
Barnwell, SC 29812

Dear Ms. Turner:

You have requested the Opinion of this Office as to the disposition of the \$7.00 execution fee collected for passport applications. Under 22 CFR § 51.61(b), the "... fee for execution of an application for a U. S. passport is \$7.00 ... which may be collected and retained by any State official before whom an application is executed ...."

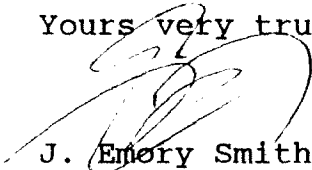
No provision of South Carolina law expressly addresses this fee or its disposition, but a strong intention is expressed in S.C. Code Ann. § 8-21-300 (1986) that the Clerks of Court receive salaries and that fees and costs collected by them be paid into the county general fund. Ops. Atty. Gen. January 8, 1987; see also Ops. Atty. Gen. September 24, 1987 and November 4, 1987. This intent probably applies to at least some fees and costs other than those specifically referenced in that statute such as the passport fee in question here. Id. In addition, previous Opinions have concluded that County Treasurers are generally the proper parties to receive, hold and disperse county funds. Ops. Atty. Gen. November 1, 1988. Of some guidance here too is an earlier Opinion which concluded that federal funds should be received, maintained and dispersed in the same way that all county funds are managed unless federal authorities have specified to the contrary. Ops. Atty. Gen. April 5, 1978. Here, even if the application fee were federal money, federal authorities have not specified a disposition contrary to the normal handing of county money. Federal regulation 22 CFR § 51.61 merely states that the \$7.00 fee "... may be collected and retained by any state official" (emphasis added), and the use of the word "may" is ordinarily permissive and not mandatory. Sutherland Statutory Construction, Vol. 2A, §57.03. Therefore, the \$7.00 fee received by the Clerks of Court should be deposited into the general fund with the County Treasurer. For

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these same reasons, no intent is indicated by state or federal law that these funds must be then credited to or made available for the benefit of the Clerks of Court. Ops. Atty. Gen. November 1, 1988.

If you have any questions, please contact me.


Yours very truly,



J. Emory Smith, Jr.  
Assistant Attorney General


JESjr/rl

REVIEWED AND APPROVED BY:



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JOSEPH D. SHINE  
Chief Deputy Attorney General



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ROBERT D. COOK  
Executive Assistant for Opinions