

The State of South Carolina



Office of the Attorney General

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January 8, 1990

Motte L. Talley, Staff Attorney
South Carolina Court Administration
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Dear Motte:

In a letter to this Office you questioned the manner of calculating the various fees and assessments established by Sections 23-23-70, 24-23-210 and 14-1-210 of the Code. You particularly questioned the present practice of calculating these fees and assessments based on the amount of the fine as originally imposed instead of the amount of the suspended sentence that is actually paid. Such practice is consistent with the statement in the South Carolina Bench Book for Magistrates and Municipal Court Judges at page III-104 which states that as to the fee established pursuant to Section 23-23-70 "(t)he fee is collected in addition to the fine imposed, even if the fine is suspended."

As to the fees established by Section 23-23-70, such provision states:

(e)very fine levied on a criminal or traffic violation in this State must have sums added to it... (per the schedule provided)...and every bond for violations must have added the same amounts which must be set apart on forfeiture for the council's program of training... In addition to the apportioned amounts set forth... twenty-five cents must be added to each fine or forfeiture... The additional portion of fines added by this section for training programs and the South Carolina Law Enforcement Hall of Fame Committee must be assessed and collected... The amount the above scale provides to be set apart and used for the council's program of training... must be added to and be levied above the fine or forfeiture imposed... .

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Pursuant to Black's Law Dictionary, 5th Edition, the term "levy" is defined as

...to assess; raise; execute; exact; tax; collect; gather; take up; seize ...(as)... to levy (acknowledge) a fine....

The term "impose" is defined as

...to levy or exact as by authority; to lay as a burden, tax, duty or charge.

Such definitions are ambiguous for purposes of the question raised by you. It is difficult to distinguish such terms in the context of an original fine or a suspended sentence actually paid.

In an opinion of this Office dated September 4, 1985 reference was made to the assessment established by Section 23-23-70 in stating "...the assessment should be collected regardless of whether a fine is imposed or is imposed and, thereafter suspended." The opinion further commented that the statute makes no specific provision for the suspension of an assessment. Another opinion of this Office dated August 27, 1987 dealt with the question of whether the fifty dollar fee established by Section 56-5-2950 of the Code for administering chemical tests to individuals arrested for driving under the influence should be collected if a fine is imposed but suspended. This opinion concluded that "...the fee should be collected even if a fine is imposed and then suspended." The opinion cited the September, 1985 opinion in stating that "...the authority to suspend sentences, or in this instance a fee, can be expressly conferred. However, absent express statutory authority for such a suspension, the fee should be collected." For instance, in Section 24-23-210 cited later in this opinion, there is a specific provision authorizing the waiver or suspension of all or part of an assessment by a circuit judge in the circumstances provided.

I would also note that Section 23-23-70 was amended just this year pursuant to Act No. 60 of 1989 so as to increase certain assessments established by this statute. However, no language was added specifically commenting on the question raised by you regarding the amount to be paid when a sentence included a suspended sentence of an amount less than the fine as originally imposed. In reviewing your question, I have located statutes in other jurisdictions which particularly comment on the appropriate assessment to be collected when a fine is suspended. See: Arizona Code Section 36-2219 ("If a fine or civil sanction is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension); California Penal Code Section 1206.8 ("When a fine is suspended, in

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whole or in part, the penalty assessment shall be reduced in proportion to the suspension"); South Dakota Code Section 23-3-52 ("If a fine is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension").

Absent such clarification by statute, it appears that the fees and assessments established by Section 23-23-70 should be calculated based on the fine as originally imposed instead of the amount of a suspended sentence actually paid. However, this conclusion is not free from doubt and therefore, legislative clarification should be sought which would specifically provide for any reduction in the case of a suspended sentence. Also, of course, a judge in sentencing may consider specifically ordering any fee or assessment to be based on the amount of a suspended sentence pending legislative clarification.

As to the other fees and assessments referenced by you, Section 24-23-210 states:

(w)hen any person is convicted, pleads guilty or nolo contendere, and is sentenced to payment of a fine, or when any person forfeits bond... to any offense within the jurisdiction of a municipal, recorder's or magistrate's court... there is imposed an assessment,... in the sum of four dollars... When any person is convicted...and is sentenced to payment of a fine or when any person forfeits bond to any offense within the jurisdiction of the Court of General Sessions, there is imposed an assessment... in the sum of twenty-five dollars... Any circuit court judge may waive or suspend the imposition of all or part of the assessment...upon finding that the assessment would place severe financial hardship upon the offender or his family.

Such provision is absolute in providing for the referenced assessments when the sentence imposed consists of a fine. See Op. Atty. Gen. dated July 30, 1981 (such assessment "...applies to all convictions, pleas or bond forfeitures regardless of the actual sentence imposed.") 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 as specifically provided.

Section 14-1-210 states

...each conviction for an offense against the State must be assessed a cost of court fee... Every conviction for an 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 fee set forth herein may not be suspended... 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. Every conviction for an offense in the general sessions courts must be assessed: (a) a cost of court fee of seven dollars and seventy-five cents where no criminal fine is imposed; or (b) an additional twenty percent of the total of a criminal fine imposed. No cost of court fee may be assessed in general sessions court where a term of imprisonment only is imposed as the punishment.

Again, as to magistrate and municipal court offenses the \$7.75 assessment is collected for each State conviction regardless of the fine imposed. No fee is assessed where the punishment is a term of imprisonment. However, as to general sessions offenses "an additional twenty percent of the total of a criminal fine imposed" must be collected. Again, no specific reference is made to the original fine or a suspended fine.

Consistent with the prior conclusion regarding the fees and assessments established by Section 23-23-70, it appears that the twenty percent "...of the total of a criminal fine imposed..." referenced in Section 14-1-210 should be calculated based on the fine as originally imposed prior to any suspension. Again, however, this conclusion is not free from doubt and legislative clarification should be sought. Also, the court could consider specifically ordering the assessment to be based on the amount of the suspended sentence.

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If there is anything further, please advise.

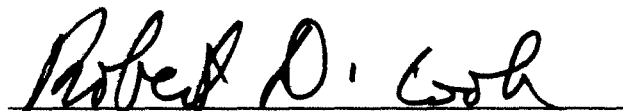
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:



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