

The State of South Carolina



Office of the Attorney General

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July 23, 1990

Thomas O. Lawton, Jr., Esquire
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P. O. Box 646
Allendale, SC 29810

Dear Mr. Lawton:

On behalf of the Allendale County Administrator, you have requested the opinion of this Office as to whether fees and costs received by the clerks of court (clerks) and registers of mesne conveyances (rmc) under Art. 5 of Chapter 21 of Title 8 of the Code of Laws of South Carolina, 1976, must be paid into the general fund of the county. You have also asked several related questions.

Section 8-21-300 states that "[a]ll...fees and costs received under the provisions of [Art. 5, Chapter 21, Title 8] by [clerks and rmc's] of any county shall be accounted for and paid into the general fund of the county as directed by the governing body thereof." "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them as to their literal meaning." South Carolina Department of Highways and Public Transportation v. Dickinson, 341 S.E.2d 134 (1986). Therefore, fees and costs received by clerks and rmc's under this article, should be paid into the general fund of the county rather than retained by those officials.

You have also asked for the meaning of the provision "as directed by the governing body of the county" in section 8-21-300. Again, giving this provision its plain meaning and applying the ordinary rules of grammar indicates that the authority of the governing body to direct applies to the accounting and payment of the money into the general fund. See also Ops. Atty. Gen. December 12, 1988. The scope of the governing body's authority to direct the accounting and payment cannot be fully addressed absent specific questions about that power; however, I note that county

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governing bodies lack the authority to impose fees in addition to those permitted by section 8-21-310 and for items not covered by its provisions except that counties may impose charges, pursuant to section 4-1-150, for "other" services such as copying. Ops. Atty. Gen. June 19, 1980 and June 11, 1985.

You have asked whether section 8-21-310 would give the county governing body the authority to direct clerks and rmc's to reimburse the county for recording fees retained in the past by a clerk. Although section 8-21-300 clearly gives the governing body authority to direct the accounting of the fees and the payment of them into the general fund, whether the county governing body could require reimbursement of fees not previously put into the general fund would depend upon all of the facts concerning those prior fees. Resolving factual matters is beyond the scope of Opinions of this Office. Ops. Atty. Gen. December 12, 1983.

In conclusion, fees and costs collected by clerks of court and registers of mesne conveyances under Title 8, Chapter 21, Art. 5 should be paid into the general fund of the county. The county governing body has the authority to direct the accounting for and payment into the fund of those fees and costs, but such authority does not extend to increasing or adding to the schedule of fees provided in that article. As to whether the authority of the county governing body would extend to the reimbursement by a clerk or rmc of fees previously collected but not paid into the general fund would be dependent upon the factual circumstances of the matter, which would be beyond the scope of the Opinions of this Office.

If you need additional information, please let me know.

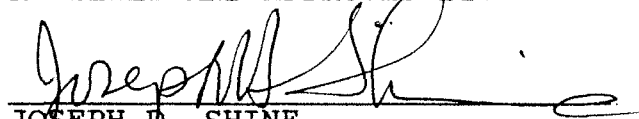
Yours very truly,



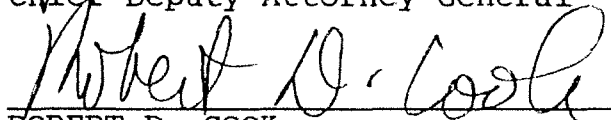
J. Emory Smith, Jr.
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REVIEWED AND APPROVED BY:



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