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Office of the Attorney General

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April 9, 1992

Mr. Motte L. Talley
South Carolina Court Administration
Post Office Box 50447
Columbia, South Carolina 29250

Dear Motte:

You have requested advice of this Office as to whether a \$25.00 fee for expunging criminal records under S.C. Code Ann. Section 8-21-310(21) (Supp. 1991) is limited to one fee per order or whether additional fees may be collected when an order provides for the expungement of multiple offenses. In addition, you have asked whether these fees are subject to the State - County distribution formula under Section 20-7-1510 (1976).

Section 8-21-310(21) provides as follows:

"...the following fees and costs must be collected on a uniform basis in each county...(21) for expunging criminal records as provided by law, \$25.00."

This provision applies the fee to the act of expunging records rather than to the act of filing an order such as in the fee imposed for filing an order for bail under Section 8-21-310(13). Further guidance as to the manner of applying the fee is provided by those statutes which impose cost of court fees for convictions on a per offense basis. See Section 14-1-210 and 14-1-212 (Supp. 1991). Because these statutes concerning the cost of court fees and the fees for expungement both address fees related to convictions, they may be construed together Sutherland Statutory Construction, Volume 2A, Section 51.02; Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Therefore, when fees are imposed on a per offense basis for convictions under Sections 14-1-210 and 14-1-212, applying the fee for expungement of the records of those convictions on a per offense basis would be consistent. Accordingly, the \$25.00 fee should be imposed for each offense expunged regardless of whether an order for expungement addresses only one offense or multiple offenses.

Section 20-7-1510 provides, in part, as follows:

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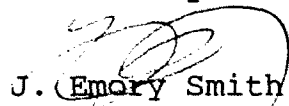
[Except as provided in this statute] three-fourths of all costs, fees, fines, penalties, forfeitures and other revenues generated by the circuit courts and the family courts established by this chapter shall be paid over to the county in which the proceeding is instituted and one-fourth of such revenues shall be remitted to the State for use in deferring the costs of the unified court system.

With reference to a predecessor to Section 20-7-1510 which had similar language, a previous opinion of this Office concluded, that only the filing fee for the first complaint or petition under paragraph 11(a) of Section 8-21-310 was subject to the distribution formula. Op. Atty. Gen. June 19, 1980.

Although paragraph 21 of Section 8-21-310 was added by subsequent legislation (Act No. 153, 1991 S.C. Acts 549), it also does not appear to be subject to the distribution provisions of Section 20-7-1510. Section 8-21-310 provides for payment of fees into the general fund of the county (Op. Atty. Gen. July 23, 1990) rather than payment of three-fourths to the county and one-fourth to the state under Section 20-7-1510. Although 1991 amendments to paragraph 11(a) specified that \$35.00 for filing the first complaint or petition would be subject to the distribution provisions of Section 20-7-1510 and the remaining \$20.00 must be remitted to the State (No. 171, Part II, Section 53, 1991 S.C. Acts 1467), the 1991 Act adding paragraph 21 contained no directive as to the distribution of the substantial fee of \$25.00 imposed by that paragraph. Accordingly, because all parts of Section 8-21-310 except paragraph 11(a) are not subject to the distribution formula and because no contrary intent is indicated by the legislature in the addition of paragraph 21, the \$25.00 fee for expungement does not appear to be subject to the distribution formula of Section 20-7-1510.


In conclusion, the expungement fee of Section 8-21-310(21) appears to apply on a per offense basis, but it is not subject to the distribution formula of Section 20-7-1510. If you need additional information or have any questions, please let me know.


Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JES, JR:jca

REVIEW AND APPROVAL:


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