

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 86-1456-35

October 6, 1986

SUBJECT: Taxation & Revenue - Custody and Disbursement  
Of Federal Funds To A County.

SYLLABI: 1. Federal funds received by the Department  
of Social Services under the auspices of the  
Child Support Enforcement Act must be placed  
under the custody of the appropriate county  
treasurer.

2. Only such funds as are necessary to  
implement and operate the provisions of §  
20-7-1315 are to be used by the county clerks  
of court. Any excess funds should be placed  
in the counties' general funds.

TO: Honorable James L. Solomon, Jr.  
Commissioner, Department of Social Services

FROM: Ronald W. Urban *ew*  
Assistant Attorney General

QUESTIONS: 1. Can federal funds received under the  
auspices of the Child Support Enforcement Act be paid  
directly by the Department of Social Services to the county  
clerks of court?

2. In the alternative, can payment be made on  
the stipulation that all such funds must be designated for  
use by the clerks of court?

APPLICABLE LAW: 42 U.S.C.A. 651, et seq. and § 20-7-1315,  
et seq., Code of Laws of South Carolina, 1976.

DISCUSSION - QUESTION 1.

The Child Support Enforcement Act sets forth a comprehensive  
system whereby federal, state and local authorities work  
jointly to enforce obligations owed by absent parents to  
their children.<sup>1</sup> As part of this system, federal funds are

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<sup>1</sup>See 42 U.S.C.A. 651, et seq. (also referred to as  
Subchapter IV-D of the Social Security Act).

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made available to participating states who have implemented enforcement provisions within federal guidelines.

South Carolina's enforcement provisions are within such guidelines. Pursuant to § 20-7-1315, et seq., the various county clerks of court, along with the Department of Social Services, administer a procedure whereby the income of absent parents is withheld to insure that child support payments are made.

The question posed here is whether the federal funds made available to South Carolina, as a participant in the Child Support Enforcement Act, can be paid directly to the county clerks of court. Currently, the Department of Social Services is disbursing such funds to the county treasurers.

In a previous opinion issued by this office, it was determined that the county treasurers are the proper parties to receive, hold and disburse public funds.<sup>2</sup> The county treasurers' duties and responsibilities have remained constant since the issuance of that opinion. Moreover, there is no indication that the provisions of the Child Support Enforcement Act would alter the application of state law as to the disbursement of public funds. Accordingly, it would appear that the Department of Social Services should continue to distribute the subject funds to the county treasurers.

#### CONCLUSION - QUESTION 1:

Federal funds received by the Department of Social Services under the auspices of the Child Support Enforcement Act must be placed under the custody of the appropriate county treasurer.

#### DISCUSSION - QUESTION 2:

The facts as presented reveal that in certain instances the county clerks of court, despite their expenses, receive little or none of the federal funds made available to South Carolina as a result of its enforcement procedures. To remedy this situation, the Department of Social Services asks whether it can make distribution to the county treasurers upon the stipulation that all such funds must be designated for use by the county clerks of court.

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<sup>2</sup>See OAG No. 79-86, dated June 29, 1979.

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The distribution of federal funds under the Child Support Enforcement Act is controlled by § 20-7-1317. That statute provides:

"Notwithstanding existing county funds allocated to the clerks of court, any federal funds earned by the clerks of court under a contract with the Department of Social Services pursuant to Title IV-D of the Social Security Act must first be used by the family court section of the respective offices of the clerks of court to provide adequate staff and equipment to implement and operate the provisions of § 20-7-1315. Thereafter, excess funds shall revert to the general fund of the county."

The above indicates that the federal funds must first be made available to the county clerks of court for implementing and operating the provisions of § 20-7-1315.<sup>3</sup> However, since § 20-7-1317 further states that all excess funds must go into the county's general fund, it stands to reason that these funds cannot be designated for use in their entirety by the county clerks of court. Such would be appropriate only in those situations where the clerks' amount of expenses equaled or exceeded the amount of federal funds given to the county.

#### CONCLUSION - QUESTION 2:

Only such funds as are necessary to implement and operate the provisions of § 20-7-1315 are to be used by the county clerks of court. Any excess funds should be placed in the counties' general funds.

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<sup>3</sup> Should the federal funds not be first made available to the county clerks of court, the appropriate remedy would in all likelihood be judicial enforcement.

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