

1980 WL 120609 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1980

***1 Re: Whether the five dollar fee provided for in Section 24-412 of the 1962 South Carolina Code is applicable to nulla bona returns**

Alan Pearce
Chief Process Server
Richland County Sheriff's Department
1400 Huger Street
Post Office Box 143
Columbia, South Carolina 29201

Dear Mr. Pearce:

I am in receipt of your letter of December 27, 1979 in which you request information concerning the legality of your office charging the five dollar fee in Section 27-412, subsection (f) of the 1962 South Carolina Code (1965 S.C. Joint Acts and Resolutions, page 743) below:

The fees of the Sheriff of Richland County shall be as set forth in this section, except that if the fee for any service is not set forth in this section, then such fee shall be the same as that provided for such service by general law, (a) for the service of any civil process, not otherwise herein specified, five dollars for the first service, and three dollars for each additional service; (b) for claim and delivery, attachments, writs of assistance and orders of seizure, fifteen dollars; (c) for distress warrants and mechanics' liens, citations and decrees, five dollars for the first service, and three dollars for each additional service; (d) for serving a subpoena writ, three dollars for the first ticket and one dollar for each additional ticket; (e) for the sale of any property, five dollars; (f) for levying and execution, entering the same and issuing a return, five dollars plus one per cent on all sums paid to a plaintiff, his agent or attorney.

Nothing in this section shall be deemed to apply to criminal process or cases.

Section (f) providing for a five dollar fee plus one per cent of all sums paid to the Sheriff, etc., would not, in my opinion apply to a nulla bona return. Levy, is defined in Blacks Law Dictionary as follows:

LEVY, v. To assess; raise, execute, exact; collect; gather, take up; seize. Thus, to levy (assess, exact, raise, or collect) a tax; to levy (raise or set up) a nuisance; to levy (acknowledge) a fine; to levy (inaugurate) war; to levy an execution, i.e., to levy or collect a sum of money on an execution.

LEVY, n. A seizure. [Farris v. Caster](#), 186 Okl. 668, 99 P. 2d 900, 902; [McBrien v. Harris](#), 39 Ga. App. 41, 145 S.E. 919; [Radford v. Kachman](#), 27 Ohio App. 86, 160 N.E. 875, 877; [Plaxico v. Webster](#), 175 S.C. 69, 178 S.C. 270. An actual making the money out of the property; the obtaining of money by seizure and sale of property. [Farris v. Caster](#), 99 P. 2d 900, 902, 186 Okl. 668. The mental act of determination to sell. [Parker v. MacCue](#), 54 R.I. 270, 172 A. 725, 727. The raising of the money for which an execution has been issued. [Plaxico v. Webster](#), 175 S.C. 69, 178 S.E. 270.

An execution of judgment is defined as the putting into effect of the final judgment of the Court. [Tice v. Tice](#), 208 Iowa 145, 224 N.W. 571, 572. Blacks Law, at page 678. All these words carry with them the notion of property—the seizure and sale of it. The ability to levy and execute presupposes the existence of property which can be seized and sold.

*2 In contrast, 'nulla bona' is defined in Blacks, supra, as 'no goods'. It is the 'name of the return made by the Sheriff to a writ of execution, when he has not found any goods of the defendant within his jurisdiction on which he could levy'. (my emphasis)

Thus, it is my opinion that a five dollar fee cannot be charged for a nulla bona return pursuant to subsection (f). I see no reason, however, why the five dollar charge provided for in subsection (a) could not be charged for a nulla bona return. A service of a civil process, i.e. the execution, is a prerequisite to the filing of a nulla bona return and since this 'civil process' is not otherwise specified in this Code section or provided for by general law, it would qualify under subsection (a). There must, however, be service of the execution.

Yours truly,

Sally G. Young
Assistant Attorney General

ATTACHMENT

P.S. If you have not already signed up for the seminar at the Criminal Justice Academy on Civil Process on January 22nd and 23rd, please do. Hope to see you there.

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