

1982 WL 189499 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 9, 1982

***1 Re: H.2009**

Mr. Chuck Shafer
Committee Research Intern
Medical, Military, Public and Municipal Affairs Committee
House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Sir:

Your request for an opinion concerning a bill your Committee has received, H.2009, to amend [Section 44-53-580 of the 1976 Code of Laws](#), has been assigned to me.

Please be advised that any opinion rendered at this stage of the proceedings should bear the following caveats: first, it would be speculative, in that there is a strong possibility the bill could be amended at least once before passage; and second, the present bill contains no specific language repealing prior legislation, details of which will be dealt with below.

Title 44 of the Code of Laws of South Carolina, dealing with poisons and controlled substances, sets forth the criminal penalties for possession and/or distribution of various drugs and other controlled substances. The penalties provided therein often call for considerable fines and, in furtherance of the intent of the legislation, a provision was made by the Legislature for distribution of those fines. At present, [Section 44-53-580 of the 1976 Code of Laws](#) provides that all monies collected in drug fines are to go to the State Treasurer, to be distributed to the Department of Mental Health for use in treatment and rehabilitation of drug addicts within the Department's addiction center facilities.

An exception to [Section 44-53-580](#) is found in [Section 44-53-370\(d\)\(3\)\(i\) and \(ii\), CODE OF LAWS OF SOUTH CAROLINA, 1976 \(Cum.Supp.\)](#). That subsection deals with offenses for possession of small amounts of marijuana or hashish. It makes possession of less than one ounce of marijuana, or ten grams or less of hashish, a misdemeanor within the jurisdiction of magistrate's court, with a penalty for a first offense of a jail term not to exceed thirty days, or a fine of not less than \$100,000, nor more than \$200.00. For a second or subsequent offense, the offender shall still be deemed guilty of a misdemeanor, and be subjected to a jail term not to exceed one year or a fine of not less than \$200.00, but not more than \$1,000.00.

Subsections (i) and (ii) provide for distribution of the fines collected under [Section 44-53-370\(d\)\(3\)](#). For a first offense, the first \$100.00 of the fine is to be distributed to the Department of Mental Health, to be used in accordance with the terms of [Section 44-53-580](#). For a second or subsequent offense, the first \$200.00 of the fine is to be sent to the Department of Mental Health. In either case, the excess of the fine is to be sent to the unit of government whose law enforcement officers initiated the investigation which resulted in the conviction. This distribution of fines is to apply whether or not law enforcement officers from more than one unit of government became involved in the case after the start of the initial investigation.

***2** Thus, as the Code of Laws presently exists, [Section 44-53-370](#) provides an exception to [Section 44-53-580](#) in the area of distribution of monies collected as fines for drug violations.

H.2009, in its present form, could lead to considerable confusion in the administration of justice. Under its provisions, [Section 44-53-580](#) would be amended to allow one-half of the fines collected for violations of Title 44 to go to the Department of Mental Health, and the remaining half of those fines to go to the governing body of the county in which the violation occurred or, where the violation occurred within the limits of a municipal corporation, to go to the municipal corporation.

The following example will provide an illustration of the confusion that could result if H.2009 became law in its present form. Suppose the Solicitor in Richland County obtains a conviction against John Doe for possession of less than one ounce of marijuana, second offense. The judge sentences Doe to one year in prison, suspended upon payment of a fine of \$1,000.00. The Clerk of Court then turns to the Solicitor and asks how the fine is to be distributed. The offense occurred in Richland County, but the investigation which led to the conviction was initiated by a City of Columbia police officer. Under H.2009, \$500.00 should be sent to the State Treasurer, and \$500.00 kept by Richland County. However, under [Section 44-53-370\(d\)\(3\)\(ii\)](#), \$200.00 should be sent to the State Treasurer, and \$800.00 sent to the City of Columbia.

Therefore, it is suggested that certain changes be made to H.2009. These changes could include specific language repealing provisions of [Section 44-53-370](#), or alterations which would make H.2009 and 44-53-370 compatible. In accordance with our telephone conversation of December 7, 1982, you requested that I send you the information I outlined regarding the possible conflicts that could occur were H.2009 to be enacted. They have been detailed herein. Accordingly, it is the recommendation of this office that the bill be sent to the Legislative Council for possible changes to make it compatible with other sections of the Code.

I trust this information answers the questions presented. If further information is needed, please do not hesitate to contact me.
Sincerely yours,

James G. Bogle
Assistant Attorney General

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