

1980 WL 120944 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 24, 1980

*1 Mr. John Patrick
Assistant Director
S.C. Court Administration
P. O. Box 11788
Columbia, SC 29211

Dear John:

You recently referred to me a letter from Magistrate Roland Jones concerning whether or not the fees established by [Section 8-21-1010\(7\) of the 1976 Code of Laws](#), as amended, which states that a magistrate shall collect ten dollars 'for issuing execution and renewal thereof', and [Section 8-21-1060\(7\) of the 1976 Code of Laws](#), as amended, which provides that magistrates shall collect 'for levying execution, posting notice of sale, conducting sale and paying over proceeds in a magistrate court action, five dollars', apply to those situations where a magistrate's constable executes on a judgment in a claim and delivery action pursuant to [Section 22-3-1470, Code of Laws of South Carolina](#), 1976. Such section provides that:

'[a]n execution shall be issued on any . . . (judgment in a claim and delivery action) . . . and if the judgment be for the delivery of the possession of personal property it shall require the officer to deliver the possession of such property, particularly describing it, to the party entitled thereto and may, at the same time, require the officer to satisfy any costs or damages recovered by the judgment out of the personal property of the party against whom it was rendered, to be specified therein, if a delivery thereof cannot be had. The execution shall be returnable within sixty days after its receipt by the officer to the magistrate who issued it.'

In the opinion of this Office, while the fees provided by [Sections 8-21-1010\(7\) and 8-21-1060\(7\)](#) are applicable to other magisterial court functions, such as issuing execution pursuant to [Section 22-3-310 of the 1976 Code of Laws](#) on a civil judgment rendered in a magistrate's court, such fees are inapplicable to the execution on a judgment in a claim and delivery action. Of course, the magistrate should collect all other fees which may be assessed in a claim and delivery action as generally provided by [Sections 8-21-1010 and 8-21-1060](#).

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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