

1977 WL 37174 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 28, 1977

*1 Mr. Edmund Atwater
Court Administration

QUESTIONS:

I. Are the special fee schedules for Clerks of Court set by statutes or ordinances in various counties throughout the State constitutional?

II. Does the Supreme Court have the power to set, or establish, fees for Clerks of Court?

STATUTES AND CASES:

Article V, § 4, S. C. Constitution; Article III, § 34, S. C. Constitution; § 27-53, 1962 Code of Laws of South Carolina; Act No. 690 of 1976 Statutes; [Shillito v. City of Spartanburg](#), 214 S.C. 11; [Elliott, et al. v. Sligh](#), 103 S.E.2d 923; [Bill Dreiling Motor Co. v. Court of Appeals](#), 468 P.2d 37 (1970); [People v. Lobb](#), 161 N.E.2d 325; [Reagan v. Farmers Loan & Trust Co.](#), 14 S. Ct. 1062 (1894); [State of Ohio, ex rel. Davis v. Masgay](#), 167 N.E.2d 659 (1960); [Rigdall v. Clarendon County, et al.](#), 188 S.C. 460, 199 S.E. 683; [Lansing v. Cherokee County Tourist Camp Board](#), 145 S.C. 7, 10 S.E.2d 157; [Sirrinc v. State](#), 132 S.C. 241, 128 S.E. 172, 175; [Cort Industries, Inc. v. Swirl, Inc.](#), 264 S.C. 142, 213 S.E.2d 445 (1975); [State ex rel. McLeod v. Knight](#), 264 S.C. 532, 216 S.E.2d 190 (1975); [State ex rel. McLeod v. Civil and Criminal Court](#), — S.C. —, 217 S.E.2d (1975); [State ex rel. McLeod v. Court of Probate of Colleton County](#), 266 S.C. 279, 223 S.E.2d 166 (1975).

DISCUSSION:

I. The South Carolina Legislature has enacted a general provision enumerating the fees to be collected and the amounts of such fees in the Court of Common Pleas, South Carolina Code Section 27-53 (1962). This is a general law which is applicable statewide.

Certain sections of the Code exist as special legislation, contrary to the general law. E.g., South Carolina Code Section 27-74 sets fees for certain of the functions enumerated in Code Section 27-53 but these fees are specifically for Calhoun County. The fees to be collected in Calhoun County conflict with those established in the general provision. Bamberg, Chesterfield, Colleton, Lexington, etc., are all counties which have special legislation pertaining to the fees to be collected in the Courts of Common Pleas of those counties. These fees vary from, and conflict with, the general provision of Code Section 27-53.

The South Carolina Supreme Court has stated that Article III, Section 34, does not prohibit special provisions within general legislation, nor does it prohibit classification by the Legislature. The Constitution does prohibit special laws where a general law can be made applicable. Code Section 27-53 is a general law applicable to all Courts of Common Pleas in the State.

The Court has stated that if a classification does exist, it must be based on a “. . . [R]ational difference of situation or condition found in the counties placed in a different class. The basis of classification must have some reasonable relation to the purposes and objects to be attained by the legislation.” [Thomas v. Macklen](#), 186 S.C. 290, 195 S.E. 539.’

*2 [Elliott v. Sligh](#), 103 S.E.2d 923 at 926. In [Shillito v. City of Spartanburg](#), 214 S.C. 11 at 20, the Court again stressed justification for classification.

‘The language of the Constitution which prohibits a special law where a general law can be made applicable, plainly implies that there are, or may be, cases where a special Act will best meet the exigencies of a particular case and in no wise be promotive of those evils which result from a general and indiscriminate resort to local and special legislation. There must, however, be a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.’

[Lansing v. Cherokee County Tourist Camp Board](#), 145 S.C. 7, 10 S.E.2d 157. The court stated there must exist some peculiar local condition requiring special treatment. [Shillito](#), *supra*, at 21.

The special provisions enacted dealing with fees collected in certain counties cannot be so justified. Code Section 27-53 enumerates all the fees to be collected in the Courts of Common Pleas and sets the amounts of such fees. The Acts and sections of the Code passed dealing with specific counties denote no reason or peculiarity requiring different fees for the same functions performed by the courts of the counties throughout the State. These special laws do not pass the test laid down by the South Carolina Supreme Court in [Shillito](#) and [Elliott](#), *supra*.

In [Sirrine v. State](#), 132 S.C. 241, 128 S.E. 172, 175, the court stated:

‘The Legislature may classify, for the purpose of legislation, if some intrinsic reason exists why the law should operate upon some and not upon all, or should affect some differently from others, but this classification must be based upon differences which are either defined by the Constitution, or are natural or intrinsic, and which suggest a reason that may rationally be held to justify the diversity in the legislation. It must not be arbitrary, for the mere purpose of classification. The class must be characterized by some substantial qualities, or attributes, which render such legislation necessary or appropriate for the individuals of the class.’

In [Rigdill v. Clarendon County](#), 188 S.C. 460, 199 S.E. 683 (1938), the Court declared unconstitutional various amendments relating to fees of the Clerks of Court in Clarendon County. The Court stated this was special legislation affecting only the Clerks of Court and Judges of Probate of certain counties. After striking this down, the Court stated that the general section pertaining to fees was valid as affecting all counties. See [Rigdill](#), 188 S.C. 460 at 470, 471.

In 1976 the South Carolina Legislature passed Act No. 690, providing for a uniform judicial system. As stated in Section 1 of the Act, Article V of the Constitution mandates a unified judicial system. The stated purpose of the Act is to comply with the mandate of the Constitution by establishing a unified court system.

*3 In the very recent cases of [Cort Industries, Inc. v. Swirl, Inc.](#), 264 S.C. 142, 213 S.E.2d 445 (1975), [State ex rel. McLeod v. Knight](#), 264 S.C. 532, 216 S.E.2d 190 (1975), [State ex rel. McLeod v. Civil and Criminal Court](#), 265 S.C. 114, 217 S.E.2d 23 (1975) and [State ex rel. McLeod v. Court of Probate of Colleton County](#), 266 S.C. 279, 223 S.E.2d 166 (1975), the Court has held and recognized that Article V of the Constitution mandates a statewide unified judicial system. This constitutional provision and the Court's decisions firmly establish the policy that the judicial system throughout the State be the same from one county to another. The unified court system mandate clearly destroys any rational basis for a classification that would allow one county to have a different fee schedule than another for the same services.

Therefore, it is the opinion of this Office that all fee schedules used in the various counties based upon ordinances and special statutes are unconstitutional and that the only fee schedule available for the services enumerated is to be found under South Carolina Code Section 27-53 (1976).

II. You have also asked whether the Court has the authority to set or establish fees for the Clerks of Court.

Article V of the South Carolina Constitution deals with the judicial system. Section 4 enumerates the powers of the Chief Justice and the Supreme Court. The Chief Justice is to be the Administrative Head of the unified judicial system and the Supreme Court is to make rules governing the administration of all the courts of the State.

The function of 'administration' has been held to include the establishing of rates. The Supreme Court stated in Reagan v. Farmers Loan and Trust Co., 14 S. Ct. 1062, 154 U.S. 421 (1894) that establishing and regulating rates is an administrative function.

The South Carolina Constitution gives the Chief Justice and the Court the power to administer the courts of the State. In The Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, 1895-1969, the intent of the framers in this section is set out, as follows:

'The Committee believes a modern state court system need to be under control of some administrative officer who can supervise the whole system. In fact, a unified court system demands such a procedure. . . . Under this section, the Supreme Court is given rule making power to supplement the rules enacted by the General Assembly.'

Throughout the Constitution, the report on the framer's intent, and the Judicial Reform Act of 1976 is found the emphasis on a need for a unified court system and a central administrative head. It is implicit that the framers recognized the necessity for a central administrator such that the judicial system can be administered as effectively and efficiently as possible.

Article V, Section 4 of the Constitution states:

'The Supreme Court shall make rules governing the administration of all the Courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practices and procedures in all such Courts.'

*4 The administrative and rule making powers of the Court are broad and give the Court great latitude in administering an effective and efficient judicial system. The fact that the Legislature has enacted Code Section 27-53 would seem to prohibit the Court from establishing a contradictory fee schedule. Cf. In Re Florida Appellate Rules, 120 So.2d 586 (Fla. 1960). However, the administrative powers of the Court would allow the Court to regulate by rule the method of payment or collecting to include the establishment of an advance base amount due upon the filing of the initial papers by a litigant. This would be a fee based upon Code Section 27-53 that would be a one time fee covering all filings, signing, docketings, recordings or issuings by the Clerk with respect to that one lawsuit. The fee could be made payable in advance and non-refundable. This would merely be an implementation of Code Section 27-53 and not its abrogation.

CONCLUSION:

The fee schedules for services enumerated under South Carolina Code Section 27-53 for Clerks of Court established by other than South Carolina Code Section 57-23 are invalid and unconstitutional. There is considerable question as to the ability of the Court to set fees but the administrative and rule making power of the Court allow it to utilize Code Section 27-53 as a basis and establish a one time fee paid in advance by a litigant upon filing his initial papers. Such a fee would cover such services as the Court may deem appropriate and could be non-refundable.

Sincerely,

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