

1977 WL 37175 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 8, 1977

*1 Robert D. Floyd
Interim Commissioner
S.C. Dept. of Social Services

QUESTION

Are incentive payments made to counties under the provisions of section 458(a) of Public Law 93-647 ('Title IV-D') 'revenues generated by . . . the Family Courts' so as to be subject to division with the state pursuant to Section 3, Article VIII, of Act 690 of the 1976 Acts and Joint Resolutions of the General Assembly of South Carolina?

STATUTES

Act 690 of the 1976 Acts and Joint Resolution of South Carolina, Article VIII, Section 3; Section 458(A) of Public Law 93-647, codified as [42 U.S.C. 658](#).

DISCUSSION

Act 690 of the 1976 Acts and Joint Resolutions of South Carolina (hereinafter cited as 'Judicial Reform') provides for the establishment of a unified statewide circuit system of Family Courts in South Carolina. The system is scheduled to take effect on July 1, 1977. In order to help defray the cost of the system, the act contains the following language:

. . . three-fourths of all costs, fines, fees, penalties, forfeitures, and other revenues generated by the Circuit Courts and the Family Courts established by this act shall be paid over to the county . . . and one forth of such revenues shall be remitted to the state. . . . Section 3, Article VIII.

The matters listed by the Act as examples of revenues are collected at the Family Court level for the benefit of the state and county governments, and thus, as collected, constitute revenue, or public money, generated by the courts.

Section 458(A) of Public Law 93-647 contains the collection and distribution criteria for child support collections made under that law. In simplified terms, the child support collected in South Carolina is divided among the public assistance recipient with whom the children reside, the State Department of Social Services, and the Federal Government. The two governments participate in distribution of their share according to their respective contributions to the Public Assistance Grant, roughly 25%-75%. If a contract has been entered into between the Department of Social Services and a county governing body, DSS will then distribute a portion of the Federal Government share in the support to that county.

The child support collected by the Department of Social Services, even though not being paid directly to the child, retains its character as child support when it is collected. It is not 'revenue' at the collection stage, since it does not accrue to the benefit of the county or to the state at this stage. Only the three percent fee paid along with the child support, authorized by Article 3, Section 3, of Judicial Reform constitutes revenue at this stage. This three percent is retained by the county and never becomes the property of any other individual or entity.

The child support collected by DSS from the Family Court is distributed pursuant to the distribution formula outlined above. A portion is earmarked for reimbursement to the Federal Government. Only after this stage, and only if a contract of cooperation exists between the county governing body and DSS, is any of the child support returned to the county as revenue.

*2 The question you raised is one of statutory interpretation. In all such matters, the prime goal is to ascertain the intent of the Legislature in passing the statute. An indication of the Legislative intent in using the terms 'revenue' in the section in question is found in the list of specific items preceeding the general category of 'other revenues'. Each item listed constitutes revenue at the collection stage, funds which, if not for judicial reform, would remain in the coffers of the Family Court or the county which funds the Family Court, and not at some later point in time. Incentive payments under Public Law 93-647 do not become revenue until they have been paid over to the Department of Social Services, allocated to the Federal Government, and authorized by a contract between the county governing body and DSS. None of these stages involve the Family Court, and each is necessary as a prerequisite to the return of funds as revenue.

CONCLUSION

In the opinion of this office, the incentive payments authorized by the provisions of Public Law 93-647 are exempt from division under the Judicial Reform Act, being generated as revenue only upon contractual agreement between the county governing body and the Department of Social Services, and not upon any activity by the Family Court.

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