

1978 S.C. Op. Atty. Gen. 15 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-7, 1978 WL 27412

Office of the Attorney General

State of South Carolina

Opinion No. 78-7

January 6, 1978

***1** Bond estreatments should be divided between the county and State as provided by Act No. 690 of 1976 as bond estreatments are included within the phrase “all cost, fines, fees, penalties, forfeitures and other revenues generated by the circuit courts and family courts.”

County Attorney

QUESTION:

Must bond estreatments be divided between the County and the State as specified in Article VIII, Section 3 of Act No. 690 of 1976?

AUTHORITIES:

Act No. 690 of 1976;

Code of Laws of South Carolina, 1976, Sections 17–15–90 and 17–15–170;

37 C.J.S., Forfeitures, Section 1;

70 C.J.S., Penalties, Section 1.

DISCUSSION:

Article VIII, Section 3 of Act No. 690 of 1976 provides for the division of court revenues as follows:

“... Three-fourths of all costs, fees, fines, 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 in which the proceeding is instituted and one-fourth of such revenues shall be remitted to the State for use in deferring the costs of the unified court system.” [Emphasis added].

The required division of revenues appears to be clearly stated, but the Act specifies some exceptions: 1.) drug fines and forfeitures remitted to the Department of Mental Health are excluded from this section; 2.) fines and forfeitures for game and fish law violations used for the purposes stated in Sections 5–1–150 and [50–1–170 of the Code](#), on July 1, 1977, are excluded from this section; and 3.) this section does not apply to fines, penalties, forfeitures, or other revenues generated in magistrates' or municipal courts.

The main question is, then, whether bond estreatments are included in the phrase “costs, fees, fines, penalties, forfeitures, and other revenues generated by the circuit courts and the family courts.” Although the Code contains no specific definition of “bond estreatment”, the payment of bail and recognizance bonds must be treated as fines, forfeitures or penalties. Section 17–15–90 which is entitled “Penalties for failure to appear after release,” states, in part, “Whoever, having been released pursuant to §§ 17–15–10 through 17–15–100, wilfully fails to appear before the court as required

shall forfeit any security which was given or pledged for his release ..." (Emphasis added). In addition [Section 17-15-170 of the Code](#) provides for the proceedings when "such recognizance shall become forfeited by noncompliance with the condition thereof ..." (Emphasis added).

Generally a forfeiture is a "divestiture of specific property without compensation in consequence of some default or act forbidden by law." 37 C.J.S., Forfeitures, § 1. A penalty is "a sum of money of which the law exacts payments by way of punishment for doing some act that is prohibited or omitting to do some act that is required to be done." 70 C.J.S., Penalties, § 1. Bond estreatments appear to fall under one or both of these definitions in that it is property (money) which is exacted as a consequence for the failure to do some act required by law.

*2 In any case, bond estreatments should be considered "other revenues generated by the ... courts" because such estreatments are payments of money required by the courts where such requirement to pay has not previously existed.

CONCLUSION:

Bond estreatments should be divided between the county and the State as prescribed in Article VIII, Section 3 of Act No. 690 of 1976 because bond estreatments are included within the phrase "all costs, fees, fines, penalties, forfeitures and other revenues generated by the circuit courts and the family courts."

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