

1979 WL 43189 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 28, 1979

*1 Honorable Thomas J. DeZern
Master-In-Equity
County Courthouse
Spartanburg, South Carolina 29301

Dear Mr. DeZern:

In a recent letter to this Office you raised a question concerning fees and costs collected by a master-in-equity. Section 14-11-310, Code of Laws of South Carolina, 1976, as amended by Act No. 164 of 1979, provides that:

‘ . . . a minimum deposit of fifty dollars for a master's fee and cost shall be collected by the master-in-equity and deposited in the general fund of the county upon filing of the order of reference; provided, further, that in actions for partition or for foreclosure of liens upon real property, the minimum deposit shall be one hundred dollars. Such deposits shall cover or be applied to costs and fees for issuance of orders, reports and for other official acts by the master, except costs on sales and fees for receiving and paying over money officially.’

You stated that you interpreted the referenced section as requiring minimum costs of fifty or one hundred dollars depending on the circumstances. Your letter indicated however that some attorneys are of the opinion that the fifty or one hundred dollars referenced by Section 14-11-310 is a deposit against which costs are charged with any excess being returned.

As stated the above referenced paragraph specifically provides that ‘such deposits shall cover or be applied to costs and fees’ for performing certain acts. It appears therefore that such phraseology lends credence to the argument that portions of the deposits are intended to be refunded if in fact the actual costs and fees do not amount to the deposits collected. Furthermore, inasmuch as ‘minimum deposits’ of those amounts are authorized to be collected, arguably deposits in excess of such minimum amounts could be collected in some instances and if any excess deposits were not refundable, the result would be a situation whereby any amount could be collected as a deposit thereby defeating the purpose of the fee schedule provided by Section 14-11-310, supra. Therefore, in the opinion of this Office, the minimum deposit of fifty dollars for a master's fee and cost which is to be collected upon filing the order of reference and the one hundred dollar minimum deposit to be collected in actions for partition or for foreclosure of liens upon real property are deposits against which those costs and fees as authorized by Section 14-11-310, supra, are collected with any excess remaining to be returned.

If there are any questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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