

1978 WL 35193 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 30, 1978

*1 Hon. Donald V. Myers
Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse
Lexington, South Carolina 29072

Dear Donnie:

You requested this Office's opinion as to the legality of possible action by your office in sending defendants through the Richland County Pre-Trial Intervention (PTI) Program and in charging these defendants certain fees as a condition of their participation in the program. Your request has been referred to me for reply.

Unfortunately, I do not feel I have sufficient information regarding specific operational characteristics of the program to render an authoritative opinion on this matter. However, I will set forth below areas in which I feel information is insufficient and some of the possible legal problems that might arise in those areas.

The Richland County PTI Program charges applicants \$150.00 as a fee to participate in its program. You seek to charge that same fee (which I assume would be remitted to the Richland County Program), but to impose a fee in addition to that of (1) \$50.00 which would go either to the County or City depending on whether County or Municipal police officers made the arrest of the defendant, and (2) another \$50.00 which would be deposited in a fund with the Lexington County Treasurer's office for the purpose of eventually establishing Lexington County's own PTI program.

The first problem concerns charging the basic \$150.00 fee. Would that condition of entry into the program be waived in the case of an indigent defendant? Non-waiver results in serious equal protection problems since comparatively wealthy defendants would have available to them a very important privilege that would be unavailable to other defendants possessing the same qualifications for the program, except for the fact of their indigency. This consideration applies with equal force whether the fee charged is \$150.00, \$200.00 or \$250.00.

The second problem relates to charging an extra \$50.00 which would be given the County or Municipality depending on which police officers made the arrest. Why do these entities receive the fee? If it is merely because these political subdivisions would have to forego the collection of fines which normally would be paid by defendants admitted to PTI programs, constitutional questions are raised as to the legality of such a basis for imposing the fees in question. Similarly, if the purported reason for a fee of that amount were that it was an 'application fee,' questions might arise as to the necessity of a fee that large. Consideration also would have to be directed to the extent to which the \$150.00 Richland County PTI fee already includes within that fee allowance for the administrative processing of applicants to the program. Of course, this is not to say there is no good reason for the City or County to receive such a fee; I simply lack information as to its purpose.

The third and final problem concerns charging defendants admitted to PTI a fee of \$50.00 which would be above and beyond the fees previously mentioned. These fees would be deposited in a fund, the purpose of which would be to establish a PTI program for Lexington County. While this question could be answered on the facts stated, I would prefer to await factual information on the above two questions and then render a single comprehensive opinion.

*2 With kind regards, I am,
Yours very truly,

Robert N. Wells, Jr.
Assistant Attorney General

1978 WL 35193 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.