

1978 WL 35224 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 16, 1978

\*1 The Honorable L. Edmund Atwater, III  
Director  
South Carolina Court Administration  
Post Office Box 11788  
Columbia, South Carolina

Dear Mr. Atwater:

On November 13, 1978, the South Carolina Supreme Court in State of South Carolina ex rel. McLeod v. Crowe and eight other cases invalidated on constitutional grounds several statutes relating to magistrate fees and jurisdiction. The Court held in those cases, (1) that magisterial courts are included in this State's uniform judicial system, (2) that legislation establishing varying territorial jurisdictions is unconstitutional, (3) that all fees charged by magistrates must be uniform, and (4) that judicial officers may not accept fees derived from their performance of judicial acts. See, State of South Carolina ex rel. McLeod v. Crowe, Slip Op. No. 20805 at 5 (filed November 13, 1978).

Because of the Court's holdings, you have requested that we advise you as to what fees magistrates may now charge in civil cases, as to whether magistrates may now retain any fee paid for the performance of a judicial service, and as to what territorial jurisdiction magistrates now possess.

#### As to Fees to be Charged

As a result of the Court's opinion, local statutes that prescribe fees which magistrates are to charge for their judicial services in civil matters are invalid on their face and are wholly void. Only those magisterial fees that are prescribed by general statutes, *i.e.*, those that operate in every county in this State, can now be constitutionally collected by a magistrate.

The principal general statute which prescribes the fees which magistrates may now constitutionally charge is that contained in Section 22-7-10 of the South Carolina Code of Laws (1976), a copy of which is attached hereto. Magistrates may also charge fees prescribed by general statutes that relate to particular civil proceedings. See, e.g., CODE OF LAWS OF SOUTH CAROLINA § 15-41-450 (1976) (for qualifying an appraiser to set off a homestead, \$.75), Id. § 22-3-1330 (for the endorsement of an affidavit in a claim and delivery proceeding, \$.25), Id. § 15-67-630 (for the issuance of a warrant of ejectment, \$2.00); see also, Id. General Index, Magistrate and Constables: Fees.

#### As to the Retention of Fees

The State Supreme Court has clearly held that South Carolina magistrates may no longer constitutionally retain as their compensation any fee charged by them for the performance of judicial acts. State of South Carolina ex rel. McLeod v. Crowe, *supra* at 6; see also, Ward v. Monroeville, 409 U.S. 57, 34 L.Ed.2d 267 (1972). In our view, all fees collected by magistrates on and after November 13, 1978, the date of the Crowe decision, for the performance of judicial acts are to be transmitted by them to their respective county treasurers and not to the State Treasurer since magistrates have traditionally been regarded in South Carolina as 'county officers' and because statutes which have heretofore abolished magisterial fee systems have expressly provided that the fees collected by magistrates are to belong to the particular county. See, e.g., 56 STAT. Act No. 1246 § 6 at 2654 (1970); cf., 20 C.J.S. Counties § 112 at 919 (1940).

As to Territorial Jurisdiction

\*2 The Supreme Court's invalidation of a statute which provided that magistrates in Richland County were to have separate and exclusive territorial jurisdiction within that county has rendered facially unconstitutional similar statutes relating to other counties in this State. As the Court stated, 'Sections 1 and 23 of Article V require that the jurisdiction of magistrates be uniform throughout the State.' State of South Carolina ex rel. McLeod v. Crowe, *supra* at 6. Such uniformity can be accomplished, the Court noted, only where 'all magistrates have uniform countywide jurisdiction.' Id. All magistrates, therefore, now constitutionally possess countywide territorial jurisdiction in both criminal and civil cases. Cf., [CODE OF LAWS OF SOUTH CAROLINA §§ 22-3-10](#), as amended, and 22-3-520 (1976).

Sincerely,

Daniel R. McLeod  
Attorney General

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