ALAN WILSON
ATTORNEY GENERAL

January 24, 2020

Robert L. McCurdy, Deputy Director
South Carolina Court Administration
1220 Senate Street, Ste. 200
Columbia, SC 29201

Dear Mr. McCurdy:

We received your request seeking an opinion on the collection of fees by South Carolina clerks of court for copies of court records requested by parties to a case or their representatives. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

> I am requesting an opinion from your Office concerning a possible conflict between two statutes addressing the collection of fees by the clerks of court in our State. S.C. Code Ann. § 14-17-570 specifically provides that the clerk shall permit either party to a suit, or his agent or attorney, to inspect or copy, during the pendency of the suit, any papers pertaining thereto without charge or to furnish on application certified copies thereof on payment of fees per copy sheet.
>
> S.C. Code Ann. § 30-4-30(B) of the Freedom of Information Act (FOIA) provides for the establishment and collection of reasonable fees for the actual cost of the search, retrieval, and redaction of records in response to a request made pursuant to the FOIA.
>
> There is a lack of uniformity in the offices of the clerks of court statewide regarding whether the imposition of a fee to provide copies of filings to parties to a suit, or their agent or attorney, during the pendency of an action is appropriate. While the first statute referenced appears more specific that the last, the last more general statute was passed by our Legislature more recently. The issue was recently discussed at a Clerks of Court Advisory Committee meeting and the Committee asked that we seek your guidance in resolving this issue.

Law/Analysis:

It is the opinion of this Office that a person who seeks to exercise their right to obtain copies of documents pursuant to Section 14-17-570 should only be charged the copy fees

established pursuant to that statute for certified copies. Provided that the criteria of Section 14-17-570 is met, we believe that a court would reject any attempt to import a FOIA-authorized fee schedule or other additional fees into a statute intended to ensure litigants had access to their own court documents.

South Carolina Code Section 14-17-570 is found in Title 14, which governs South Carolina courts generally; and is located in Chapter 17, which governs clerks of court specifically. That statute reads in full:

> The clerk shall not in any case permit either the books or records to be removed from his office, though he shall at all times permit either party to a suit, or his agent or attorney, to inspect or copy, during the pendency of suit, any papers pertaining thereto without charge or to furnish on application certified copies thereof on payment of fees per copy sheet.

S.C. Code Ann. § 14-17-570 (2017). The second statute cited in your letter, Section 30-4-30, is a lengthy statute constituting one portion of the South Carolina Freedom of Information Act (the "FOIA") in Title 30. The language relevant here reads:

> The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies.

S.C. Code Ann. § 30-4-30(B) (Supp. 2019).

This author's research has not identified any reported South Carolina case or prior opinion of this Office which addresses your question directly. It appears that a court faced with this question would rely upon the rules of statutory construction to give effect to the intention of the Legislature in codifying the various statutes set out above. As this Office has previously opined:

> The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). All rules of statutory interpretation are subservient to the

> one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005). The South Carolina Supreme Court also has held that:

> However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (quoting *Stackhouse v. County Board*, 86 S.C. 419, 68 S.E. 561 (1910).). Your letter also observes that of the two statutes at issue here, one is more specific and was passed earlier in time, while the other is more general and was passed later. Concerning such statutes our State's Supreme Court has opined:

> It is well established in this State that statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein.

Strickland v. State, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981) (citing *State v. Harrelson, et al.*, 211 S.C. 11, 43 S.E.2d 593 (1947)).

When comparing each of the statutes cited in your letter, we observe that the General Assembly has established two separate avenues for certain individuals to obtain certain records. One avenue is found in Section 14-17-570, which establishes the right of a party to a case, or their agent or representative, to obtain copies of their case file from the clerk of court, who must retain the originals. S.C. Code Ann. § 14-17-570 (2017). The second avenue is the FOIA, which created a tool for any citizen to seek public documents from public bodies, subject to the terms of the statute. S.C. Code Ann. § 30-4-30 (Supp. 2019). Our Office has observed in the past that "it is not at all clear that the court system is included within the reach of FOIA." *Op. S.C. Att'y Gen.*, 2014 WL 3965783 (August 4, 2014). Even assuming for the sake of argument that the court is included, these statutes would remain two separate tools, created for distinct reasons, and designed to be used under different circumstances by different individuals. Therefore, we believe a court would conclude that each of these statutes can coexist without conflict.

You correctly observe in your letter that Section 14-17-570 predates the FOIA. In fact the substance of this earlier statute has been firmly embedded in the law of our State for well over a century. While we were unable to locate the original text of the statute passed in 1839, we did find a version of our current statute in Section 735 of the 1881 General Statutes of South Carolina, which reads in full:

> The Clerk shall not, in any case, permit either the books or records to be removed from his office, though it shall be his duty at all times to permit either party to a suit, or his agent or attorney, to inspect or copy, during the pendency of suit, any papers pertaining thereto, without charge, or to furnish, on application, certified copies thereof, on payment of fees per copy sheet.

Thus some version of Section 14-17-570 has been the law of this State for well over a century, establishing the same ministerial duties using language nearly identical to that currently found in our modern Code. *Cf.* S.C. Code Ann. § 14-17-570 (2017). If the Legislature had intended to repeal such an established mandate we believe that they would have done so expressly. *See Strickland v. State*, 276 S.C. 17, 274 S.E.2d 430 (1981).

Turning to the text of Section 14-17-570, it appears that the Section creates a ministerial duty of the clerk which is plain and unambiguous: a clerk of court "shall at all times . . . furnish on application certified copies thereof on payment of fees per copy sheet." S.C. Code Ann. § 14-17-570 (2017). Those are the only fees authorized in the statute, which is narrowly tailored to apply to "a party to a suit, or his agent or attorney, . . . during the pendency of suit." *Id.* We do not see any basis in the text of the statute to charge any additional fees, such as fees for the search and retrieval of documents permitted in the FOIA. *Cf.* S.C. Code Ann. § 30-4-30(b) (Supp. 2019). Therefore we believe that a court would reject any attempt to import the additional fees authorized by the FOIA into a statute governing clerks of court found in another title of the South Carolina Code.

Conclusion:

In conclusion, it is the opinion of this Office that a person who seeks to exercise their right to obtain copies of documents pursuant to Section 14-17-570 should only be charged the copy fees established pursuant to that statute for certified copies. Provided that the criteria of Section 14-17-570 is met, we believe that a court would reject any attempt to import a FOIA-authorized fee schedule or other additional fees into a statute intended to ensure litigants had access to their own court documents.

Sincerely,

David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General