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VIA FACSIMILE/U.S. MAIL

June 11, 2004

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David R. Williams, Executive Director
Georgia Superior Court Clerks' Cooperative Authority
Suite 100
1875 Century Boulevard
Atlanta, Georgia 30345

Re: House Bill 1EX

Dear David:

Enclosed is a copy of 1990 Op. Att'y Gen. U90-21 which addresses the additional penalty imposed by O.C.G.A. § 15-21-100. Also enclosed is a copy of 2003 Op. Att'y Gen. 03-4 which addresses a number of issues related to O.C.G.A. § 15-21-73(a). 2003 Op. Att'y Gen. 03-4 specifically addresses the inclusion of costs in the original fine amount for purposes of calculating the amount on which the additional penalty is calculated. In addition, 2003 Op. Att'y Gen. 03-4 also includes a discussion regarding partial payments and the priority of distributions.

The enclosed should be of reference related to the implementation of House Bill 1 EX. You may want to provide copies of the enclosed to the municipal court clerk that raised an issue related to O.C.G.A. § 15-21-100 as well as an issue regarding the inclusion of costs in the fine amount for purposes of calculating the penalty under O.C.G.A. § 15-21-73.

I hope that this is helpful. If you would like to discuss, please contact me.

Sincerely,


W. WRIGHT BANKS, JR.
Senior Assistant Attorney General

WWB/me
Enclosures

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*1990 Ga. AG LEXIS 45, *; 1990 Op. Atty Gen. Ga. 132*

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF GEORGIA

UNOFFICIAL OPINION **U90-21** n1

n1 The views expressed herein are the completely unofficial views of the writer only, and should be considered as information only.

1990 Ga. AG LEXIS 45; 1990 Op. Atty Gen. Ga. 132

September 21, 1990

CORE TERMS: drug-related, misdemeanor, newly enacted, felony, fine

SYLLABUS:

[*1]

RE: The newly enacted statutes, O.C.G.A. §§ 15-21-100 and 40-5-75, which call for additional penalties for persons convicted of specific drug-related crimes, apply to misdemeanors.

REQUESTBY:

Honorable Dennis T. Still
Judge, Recorder's Court
City of Lawrenceville
P. O. Box 1017
Lawrenceville, Georgia 30246

OPINIONBY:

MICHAEL J. BOWERS, Attorney General

Prepared by: TERRY L. LONG, Staff Attorney

OPINION:

You requested an opinion on whether O.C.G.A. §§ 15-21-100 and 40-5-75 include misdemeanor drug convictions. Both O.C.G.A. § 15-21-100 and § 40-5-75 were enacted during the 1990 session of the General Assembly and both statutes call for additional penalties for individuals convicted of specific drug-related crimes.


Code section 15-21-100 calls for an additional fine in every case in which the court imposes a fine for a conviction under O.C.G.A. §§ 16-13-30, 16-13-30.1, and 16-13-31. Code section 40-5-75 calls for the suspension of the driver's license for any person convicted under O.C.G.A. § 16-13-30(a) or (j). Each crime referred to in the three sections of Title 16 is a drug-related felony except O.C.G.A. § 16-13-30(j) which expressly includes misdemeanor drug-related offenses found in O.C.G.A. § 16-13-2. [*2]

The plain language of the newly enacted statutes must be followed. Earth Management, Inc. v. Heard County, 248 Ga. 442 (1981). In the statutes under consideration, there appears to be no ambiguity since these clearly refer to misdemeanor drug violations found in § 16-13-2.

Therefore, it is my unofficial opinion that the additional penalties called for in O.C.G.A. §§ 15-21-100 and

40-5-75 are to be imposed upon convictions for drug-related felonies and misdemeanors.

I hope that this sufficiently responds to your question.

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2003 Ga. AG LEXIS 4, *

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF GEORGIA

Official Opinion 2003-4

2003 Ga. AG LEXIS 4

April 7, 2003

CORE TERMS: fine, clerk, surcharge, sentencing, recipient, collecting, sentence, partial, duty, pronouncement, calculated, probate, traffic, amend, moneys arising, proportional, distributed, collected, collection, particular case, penalty amount, court officer, amounts owed, traffic law, sum equal, calculating, entirety, lesser, assess, silent

TYPE: OFFICIAL OPINION

SYLLABUS:

[*1]

Miscellaneous questions regarding the imposition, collection, and distribution of additional penalties and surcharges on criminal and traffic fines

REQUESTBY:

State Auditor

OPINIONBY:

J. JAYSON PHILLIPS, Assistant Attorney General

OPINION:

You have requested my opinion on five issues concerning the imposition, collection, and distribution of additional penalties and surcharges on criminal and traffic fines, including specific questions on the Peace Officer and Prosecutor Training Fund Act of 1983 (hereinafter "POPTF"), O.C.G.A. §§ 15-21-70 through 15-21-77. I will address these questions in the order they appear in your letter.

Your first question is whether, in circumstances where an additional penalty is required to be imposed for a criminal or traffic law violation pursuant to O.C.G.A. § 15-21-73, a clerk of court is "required to impose" the additional POPTF penalty in the event the sentencing judge does not specifically refer to the additional penalty when sentence is pronounced.

When a sentencing judge imposes a fine for the violation of a criminal or traffic law, the General Assembly has mandated that "there [*2] *shall* be imposed as an additional penalty a sum equal to the lesser of \$ 50.00 or 10 percent of the original fine." O.C.G.A. § 15-21-73(a)(1) (emphasis added). Previously, this office has opined that although it would "probably avoid misunderstanding" to do so explicitly, a sentencing judge is not required to set forth specifically the additional penalty during the judge's oral pronouncement of sentence. 1983 Op. Att'y Gen. 83-80, at 182. This is so because the "additional penalty" is imposed by operation of law; it is required in every case in which a criminal or traffic fine is imposed.

While the sentencing judge may not reference the POPTF "additional penalty" in the oral pronouncement of sentence, "the sums provided for in Code Section 15-21-73 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from fines." O.C.G.A. § 15-21-74 (emphasis added). Since the clerk of court is the court officer charged with the duties of collecting the POPTF "additional penalty," [*3] see 1996 Op. Att'y Gen. U96-10, it is my opinion that the clerk is therefore required to "assess" the POPTF "additional penalty" when the sentencing judge's oral pronouncement of sentence is silent on that issue.

In a previous opinion, this office stated that the "additional penalty ... may be added on by the respective court officer whose duty it is to collect the moneys in each particular case." 1983 Op. Att'y Gen. 83-80 (emphasis added). You mention in your letter that some clerks have used this statement as justification not to add the additional penalty when the sentencing judge's oral pronouncement is silent. However, under O.C.G.A. § 15-21-73 the assessment by the clerk is mandatory. The use of the word "may" in that opinion indicates merely that the clerk has the authority to assess the penalty when the trial court does not explicitly do so.

Your second question is whether, when calculating the POPTF additional penalty, court costs are to be included in the "original fine" amount or are court costs a separate fine against which POPTF additional penalty must be separately calculated and assessed? [*4] In your letter you have offered the example of a \$ 500 fine with court costs of \$ 100. Thus your question is whether the additional penalty amount is \$ 50.00 (10% of \$ 500.00) plus a second additional penalty amount of \$ 10.00 (10% of \$ 100.00), or is the total additional penalty only \$ 50.00, the maximum authorized by statute, since 10% of the \$ 600.00 total (fine plus court costs) is \$ 60.00.

O.C.G.A. § 15-21-73(a)(1) states that the fine amount from which the additional penalty is to be calculated "shall be construed to include costs ... [and shall be] a sum equal to the lesser of \$ 50.00 or 10 percent of the original fine." Given this language in the statute, it is my opinion that court costs are to be included in calculating the original fine amount on which the additional penalty is calculated. Thus, in your example, the additional POPTF penalty would total only \$ 50.00. This interpretation is consistent with previous unofficial opinions of this office concerning the calculation of additional penalties under this Code section and for certain drug convictions pursuant to O.C.G.A. § 15-21-100 [*5] (a). See 1996 Op. Att'y Gen. U96-14; 1984 Op. Att'y Gen. U84-18. This interpretation subsequently has been embraced by the Court of Appeals of Georgia. See Barraco v. State, 252 Ga. App. 25, 25-26 (2001).

Your third question is whether O.C.G.A. § 15-6-95, the superior court partial payment distribution priority list, requires that amounts owed to higher priority recipients be paid in their entirety before distributions are made to a lower priority recipient. It is my opinion that the amount owing to a higher priority recipient must be paid in its entirety before distribution is made to a lower priority recipient. Before listing the nine recipients, the Code section provides that a superior court clerk "shall distribute said sums in the order of priority set forth below." Were partial payments to be distributed pro rata to the nine recipients as they are received, the priority payment schedule enacted by the General Assembly would be negated, i.e., there would be no "priority." The Code section obligates the clerk to pay, in the order established by the General Assembly, "the amount," "the surcharge," [*6] or "the balance" owed to the highest priority recipient before a distribution is made to the next priority recipient. If a person is ultimately unable to pay the total amount assessed, lower priority funds may receive no payment in that particular case.


As an additional part of this question, you ask whether the superior court clerk must modify the additional penalty and surcharge amounts owed if the superior court amends the sentence to reduce the original fine to the amount paid to date in the case of a defendant who has made partial payments. If the sentencing court amends the fine to the amount paid rather than merely suspending payment of the remaining balance, it is my opinion that the clerk, as the court officer charged with the duty of assessing and collecting those amounts, must amend the additional penalty and surcharge amounts so as to make them statutorily consistent with the amended original fine. Because many of these additional penalties and surcharges are calculated as a percentage of the original fine amount, the change to the original fine amount will necessarily result in a change to the percentage-based additional penalties and surcharges.

In your fourth [*7] question you ask whether a previous opinion of this office, 1996 Op. Att'y Gen. U96-8, states that partial payments received by a probate court must be distributed proportionally between the fine and the surcharges, with the percentage remitted to each surcharge fund then determined by its percentage within the surcharge category. That opinion noted that "there is no statutory system of priorities applicable to probate courts which would be comparable to the provisions of O.C.G.A. § 15-6-95, which is applicable to clerks of the superior courts" before concluding that, with regard to probate courts, "in the absence of any system of priorities established by law ... the sums collected should be paid to each fund in a proportional amount to the sums collected as each payment is received." *Id.* at 117.

In the absence of such statutory priorities, this remains sound advice. However, in the event partial payments are distributed in this manner and the sentencing court subsequently amends the original fine amount, the amount due each particular fund would need to be recalculated and any excess distributions redistributed [*8] by the court officer charged with the duty of collecting moneys arising from fines.

Your fifth question is whether the proportional distribution system discussed in regard to probate courts in 1996 Op. Att'y Gen. U96-8 should be applied to any court collecting fines and fees other than a superior court. Absent statutory direction from the General Assembly to the contrary regarding payment priority, it is my opinion that a proportional or pro rata distribution system is appropriate for any court that is legally required to collect fines and moneys arising from fines.

This opinion has addressed miscellaneous questions regarding the imposition, collection, and distribution of additional penalties and surcharges on criminal and traffic fines, including specific questions on the Peace Officer and Prosecutor Training Act of 1983. I trust it is responsive to your inquiry.

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