



## GEORGIA DEPARTMENT OF LAW

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June 16, 2017

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Atlanta, Georgia 30334

John Earle, Executive Director  
Georgia Superior Court Clerks' Cooperative Authority  
Suite 100  
1875 Century Boulevard  
Atlanta, Georgia 30345

Re: Senate Bill 160

Dear Ms. Sullivan and Mr. Earle:

This follows up your recent request for informal advice regarding some of the provisions of Senate Bill 160. In our prior discussion regarding Senate Bill 160, you have advised that the Georgia Superior Court Clerks Cooperative Authority (the "Authority") and the Department of Administrative Services ("DOAS") are working together related to implementation of portions of SB160.<sup>1</sup>

As amended by SB160, O.C.G.A. §§ 16-5-21(c)(2), 16-5-24(c)(2), and 16-10-24(d) will each provide, after July 1, 2017, that a portion of criminal "fine[s] imposed, after

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<sup>1</sup> While the Authority does not have a statutory directive to provide assistance related to implementation of SB160, in light of the role served by the Authority as a clearinghouse under Chapter 21A of Title 15 for various amounts collected by courts and the broad grant of power to the Authority in its enabling legislation, it is fairly clear that the Authority is empowered to provide assistance related to implementation of SB160. O.C.G.A. § 15-6-94(a) & 15-21A-3(b); see 1996 Op. Att'y Gen. 96-11 (Georgia Superior Court Clerks' Cooperative Authority has express and implied powers, but may not assume certain statutory responsibilities granted to the Secretary of State).

distributing the surcharges and deductions required by Chapter 21 of Title 15, Code Sections 36-15-9 and 42-8-34 and Title 47, ... shall be earmarked for the Georgia State Indemnification Fund for purposes of payment of indemnification for death or disability as provided for in Part 1 of Article 5 of Chapter 9 of Title 45.” You have asked for informal advice related to which entity is entitled to receive the amounts deducted from fines pursuant to O.C.G.A. §§ 16-5-21(c)(2), 16-5-24(c)(2) and 16-10-24(d).<sup>2</sup>

O.C.G.A. § 45-9-82 provides for a program of indemnification as follows:

(a) There is established a program to provide for indemnification with respect to the:

(1) Death of any law enforcement officer, firefighter, or prison guard who is or has been killed in the line of duty subsequent to January 1, 1973;

(2) Permanent disability of any law enforcement officer, firefighter, or prison guard who is or has been permanently disabled in the line of duty subsequent to January 1, 1973;

(3) Death or permanent disability of any emergency medical technician who is killed or permanently disabled or who has been

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<sup>2</sup> SB 160 makes clear that the no amounts are payable to the Fund until the amounts that are payable for the surcharges and deductions required by Chapter 21 of Title 15, Code Sections 36-15-9 and 42-8-34 and Title 47 have been paid. As we have discussed, as the later expression of the General Assembly’s intent and the more specific law on the subject, these provisions will result in a different order of payment in some cases involving partial payments. See Tomblin v. S.S. Kresge, 132 Ga. App. 212, 216 (1974) (Later enacted legislations is granted pre-eminence as the latest expression of legislative intent); First Nat’l Bank v. Sinkler, 170 Ga. App. 668, 670 (1984) (Specific statutes control over general statutes in the absence of a contrary legislative intent). Under current law, where partial payments are made in cases in superior court, the actual fine imposed which is typically paid to the county is paid after a number of surcharges and deductions, but before the amounts addressed in O.C.G.A. §§ 15-21-112, 15-21A-6, 15-21-149, 15-21-100 and 42-8-34. O.C.G.A. § 15-6-95. Similar orders of payment priority are required by rules promulgated by the Authority for other courts. Under SB160, in cases involving violations of O.C.G.A. §§ 16-5-21(c), 16-5-24(c), or 16-10-24, the enumerated surcharges and deductions, where applicable, are to be paid in advance of the amounts payable to the Fund in all applicable courts.

killed or permanently disabled in the line of duty subsequent to January 1, 1977;

(4) Death or permanent disability of any emergency management rescue specialist who is killed or permanently disabled on or after January 1, 1991; and

(5) Death or permanent disability of any state highway employee who is killed or permanently disabled in the line of duty on or after January 1, 1990.

(b) Such program shall be administered by the department, subject to review by the commission.

The Georgia State Indemnification Fund is a creation of the General Assembly. O.C.G.A. § 45-9-84.1 provides as follows:

There is created a fund to be known as the Georgia State Indemnification Fund. The custodian of the Georgia State Indemnification Fund shall be the department. The department shall administer the Georgia State Indemnification Fund and shall approve or deny claims for compensation filed pursuant to this article; provided, however, that any decision of the department shall be subject to review by the commission as provided in Code Section 45-9-84. Any amounts held by the Georgia State Indemnification Fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the Georgia State Indemnification Fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the Georgia State Indemnification Fund. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer.

(emphasis added).<sup>3</sup> The term “department” as used in Part 1 of Article 5 of Chapter 9 of Title 45 means the “Department of Administrative Services.” O.C.G.A. § 45-9-81(2). Related to payments from the Fund, O.C.G.A. § 45-9-85 currently provides as follows:

(a) Indemnification shall be paid under this article as follows:

(1) In the case of a partial permanent disability suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, state highway employee, or prison guard, the eligible disabled person may elect payment of \$35,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum;

(2) In the case of a total permanent disability suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, state highway employee, or prison guard, the injured person may elect to receive a payment of \$75,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; or

(3) In the case of death or organic brain damage suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management specialist, state highway employee, or prison guard, payment shall be made to the surviving unremarried spouse or the dependents of the spouse or deceased person as shown in his or her most recent tax return or to

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<sup>3</sup> The Georgia State Indemnification Commission is also a creation of the General Assembly. O.C.G.A. § 45-9-83. The Commission consists of “the Governor, the executive director of the Peace Officer Standards and Training Council, the executive director of the Georgia Firefighter Standards and Training Council, the commissioner of public safety, the commissioner of transportation, the commissioner of corrections, the commissioner of community supervision, the commissioner of public health, one law enforcement officer... and one firefighter...” *Id.* The Commission serves in an oversight and review role related to the Fund including reviewing decisions of DOAS related to payments from the Fund in accordance with O.C.G.A. §§ 45-9-82(b), 45-9-84 & 45-9-85(c).

the legal guardian of the organically brain damaged person. The surviving unremarried spouse, dependents, or the legal guardian may elect to receive payment in a lump sum payment of \$100,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum.

(b) After the department, or the commission upon review of a denial by the department, determines that a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, prison guard, or state highway employee has suffered a total permanent disability, a partial permanent disability, organic brain damage, or death in the line of duty, the department shall be authorized to make the appropriate payments as provided in subsection (a) of this Code section.

(c) If the department denies a claim, any person seeking benefits pursuant to this part may appeal the department's decision to the commission. Any such appeal shall be filed with the commission within 60 days of receipt of the department's decision and shall identify the errors in the department's decision. Appeals shall be considered by the commission at the commission's semiannual meeting as provided in Code Section 45-9-84.

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(emphasis added).<sup>4</sup> O.C.G.A. § 45-9-84.3 provides:

The department is authorized, subject to the limitations contained in this part:

- (1) To pay the appropriate indemnification to the persons eligible for indemnification under this part from the proceeds of the Georgia State Indemnification Fund;
- (2) To make such payments as may be necessary to defray the expenses and costs incurred by the department and the commission in administering this part; and

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<sup>4</sup> The amounts provided for in O.C.G.A. § 45-9-85 are increased under SB 160 resulting in claims submitted after July 1, 2017 receiving higher levels of compensation than under present law.

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(3) With the approval of the commission, to utilize the resources of the Georgia State Indemnification Fund to purchase insurance to provide for such indemnification.

(emphasis added). From my review, O.C.G.A. §§ 16-5-21(c)(2), 16-5-24(c)(2) and 16-10-24(d), as amended by SB160, will provide that portion of the fines imposed “shall be earmarked for the Georgia State Indemnification Fund.” DOAS is the custodian of the Fund, is charged with administering the Fund and is the entity empowered to make payments from the Fund. O.C.G.A. §§ 45-9-84.1 & 45-9-84.3. Therefore, it is fairly clear that DOAS is the proper recipient of the amounts from the fines that are earmarked for the Fund under O.C.G.A. §§ 16-5-2(c)(2), 16-5-24(c)(2) and 16-10-24(d).

I hope that this informal advice is helpful. If you would like to discuss, please contact me. Please keep in mind that this is not an official or unofficial opinion of the Attorney General.

Sincerely,



W. WRIGHT BANKS, JR.  
Deputy Attorney General

WWB/pk

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