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OFFICIAL OPINION

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

Re: The judicial operations fund fee imposed by O.C.G.A. § 15-21A-6.1(a) applies to the fee to be remitted to clerks of superior court for the issuance of certificates of appointment and reappointment to notaries public.

Dear Mr. Williams:

This responds to your request for an official opinion regarding House Bill 1055, Act No. 360. Your request concerns the application of O.C.G.A. § 15-21A-6.1, as enacted by House Bill 1055. O.C.G.A. § 15-21A-6.1(a) provides as follows:

In addition to all other legal costs, there shall be charged to the filing party and collected by the clerk an additional filing fee of \$125.00, to be known as a judicial operations fund fee, in each civil action or case filed in a superior court except that the state, including, but not limited to, its departments, agencies, boards, bureaus, commissions, public corporations, and authorities, municipalities, counties, and political subdivisions shall be exempt from such fee. Without limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari, trade name registrations, applications for change of name, and all other proceedings of a civil nature. Any matter which is docketed upon the official dockets of the superior court and to which a number is assigned shall be subject to such fee, whether such matter is contested or not.<sup>1</sup>

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<sup>1</sup> The Governor signed the bill on May 12, 2010. According to Section 5.1 of House Bill 1055, Parts I, III, IV and V become effective upon its approval by the Governor or upon its becoming law without such approval. The above-quoted language of O.C.G.A. § 15-21A-6.1(a) appears in Part I of House Bill 1055. Thus, the additional \$125.00 fee became effective on May 12, 2010.

You specifically inquired about the application of the \$125.00 additional fee to the current cost of issuing a certificate of appointment and reappointment to notaries public, thereby increasing the total fee from \$37.00 to \$162.00.<sup>2</sup> Based on the similarity between the language used in O.C.G.A. § 15-21A-6.1(a) and O.C.G.A. § 15-21A-6(a), I conclude that the additional \$125.00 fee generally applies to each and every proceeding of a civil nature, including the issuance of certificates of appointment and reappointment to notaries public.

From information provided by the staff of the Georgia Superior Court Clerks' Cooperative Authority ("GSCCCA"), it is my understanding that, since its enactment in 2004, GSCCCA and clerks of superior court have uniformly followed an interpretation of O.C.G.A. § 15-21A-6 that adds the \$15.00 additional fee imposed to the cost of issuing certificates of appointment and reappointment to notaries public based on the language in O.C.G.A. § 15-21A-6(a), which provides for the additional \$15.00 fee in language largely identical to O.C.G.A. § 15-21A-6.1(a).<sup>3</sup> O.C.G.A. § 15-21A-6(a) provides as follows:

In addition to all other legal costs, there shall be charged to the filing party and collected by the clerk an additional filing fee of \$15.00 in each civil action or case filed in the superior, state, recorder's, mayor's, and magistrate courts except that municipalities, counties, and political subdivisions shall be exempt from such fee. Without limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari, trade name registrations,

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<sup>2</sup> Pursuant to O.C.G.A. § 15-6-77(g)(9), as amended by House Bill 1055, the fee for "[i]ssuing certificate of appointment and reappointment to notaries public" is set at \$20.00. As will be explained more fully herein, the sum of \$15.00 is added to this amount, pursuant to O.C.G.A. § 15-21A-6(a). In addition, the sum of \$1.00 is added pursuant to O.C.G.A. § 47-14-51(a) for the Superior Court Clerks' Retirement Fund; \$1.00 is also added pursuant to O.C.G.A. § 47-16-61(a) for the Sheriffs' Retirement Fund of Georgia.

<sup>3</sup> O.C.G.A. § 15-21A-6 is part of Chapter 21A of Title 15. Chapter 21A addressed in part "a need for a centralized agency to act as the collecting and remitting agent for . . . costs, fees, and surcharges in order to provide for uniform practices and fiscal accountability with respect to such collection and remittance." O.C.G.A. § 15-21A-1(a). GSCCCA "act[s] as collecting and remitting agent with respect to the costs, fees, and surcharges for certain costs, fees, or surcharges by any clerk of court or other officer or agent of any court." O.C.G.A. § 15-21A-3(b). GSCCCA is empowered to "prescribe uniform procedures and forms for the reporting and remittance of all funds subject to . . . chapter [21A] . . ." O.C.G.A. § 15-21A-4(b). In addition, "all clerks or other officers or agents remitting or reporting such funds shall use the prescribed procedures and forms in reporting and remitting funds to the authority." *Id.* Further, O.C.G.A. § 15-21A-7(b) provides that "[t]he authority shall promulgate rules and regulations for the administration of this chapter." In addition to its duties related to administering Chapter 21A of Title 15, GSCCCA is also charged with the duties related to notaries public that were previously performed by the Secretary of State under Chapter 17 of Title 45. As the entity charged with administering Chapter 21A of Title 15 as well as the entity charged with maintaining records and performing certain other functions related to notaries public, the interpretation of the application of the additional fee under O.C.G.A. § 15-21A-6(a) by GSCCCA would likely be given deference by the courts. *See City of LaGrange v. Ga. Pub. Serv. Comm'n*, 296 Ga. App. 615, 619 (2009) (citations omitted).

applications for change of name, and all other proceedings of a civil nature. Any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned shall be subject to such fee, whether such matter is contested or not.<sup>4</sup>

While the two statutes are very similar, there are some notable differences, such as the range of venues to which 6(a) applies and the expansion of exclusions in 6.1(a) to include certain entities, including the state and its agencies. It is of particular import that, in enacting O.C.G.A. § 15-21A-6.1(a), the General Assembly amended the original statutory language from O.C.G.A. § 15-21A-6(a) to exclude more governmental parties from the additional fee, but did not include any language to expressly exclude various types of filings such as the issuance of certificates of appointment and reappointment to notaries public.

[I]t is well settled in this jurisdiction that all statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it; that they are to be construed in connection and in harmony with the existing law; and that their meaning and effect will be determined in connection, not only with the common law and the Constitution, but also with reference to other statutes and the decisions of the courts.

*Spence v. Rowell*, 213 Ga. 145, 150 (1957). Thus, the General Assembly is presumed to have known the application of O.C.G.A. § 15-21A-6(a) to notary fees. “Georgia law provides that the express mention of one thing in an Act or statute implies the exclusion of all other things.” *Abdulkadir v. State*, 279 Ga. 122, 123 (2005). Therefore, if the legislature had intended that notary fees be excluded from the \$125.00 filing fee increase, it would have explicitly listed it in the exclusions under O.C.G.A. § 15-21-6.1(a).

Additional support for the conclusion that the additional \$125 fee applies to the issuance of certificates of appointment and reappointment to notaries public can be found in the application of other similar additional fees for the Superior Court Clerks’ Retirement

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<sup>4</sup> It could be argued that because O.C.G.A. § 15-21A-6.1(a) states “[a]ny matter which is docketed upon the official dockets of the superior court and to which a number is assigned shall be subject to such fee, whether such matter is contested or not,” it cannot apply to issuance of certificates of appointment and reappointment to notaries public because some counties do not docket notary applications. However, the statute gives no indication that a matter must be docketed to be subject to the fee; rather, it implies that docketed matters are also subject to the fee. Furthermore, from information provided by the notary staff at GSCCCA, it is my understanding that counties have varied practices regarding whether to docket notary applications. Therefore, to hold that the fee only applies to docketed matters could lead to an inconsistent fee from county to county.

Fund of Georgia and the Sheriffs' Retirement Fund of Georgia. The language of O.C.G.A. § 15-21-6.1(a) is very similar to that used in O.C.G.A. § 47-14-51(a), which provides as follows regarding the Superior Court Clerks' Retirement Fund of Georgia:

In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in each civil suit, action, case, or proceeding filed in the superior courts or in any other court of this state in which a clerk eligible for membership in this retirement fund is clerk, including, without limiting the generality of the foregoing, all adoptions, charters, certiorari, applications by a personal representative for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of a civil nature, filed in the superior courts or other such courts.

Both O.C.G.A. § 47-14-51(a) and O.C.G.A. § 15-21A-6.1(a) provide that the additional fees shall be charged in each proceeding of a civil nature. As with O.C.G.A. § 15-21A-6(a), based on information provided by the staff of GSCCCA, it is my understanding that clerks of superior court have uniformly added the \$1.00 additional fee imposed by O.C.G.A. § 47-14-51(a) to the fee for issuance of a certificate of appointment or reappointment to notaries public. Based on similar wording, we understand that an additional fee has been similarly applied under O.C.G.A. § 47-16-61(a), the Sheriffs' Retirement Fund of Georgia, which provides as follows:

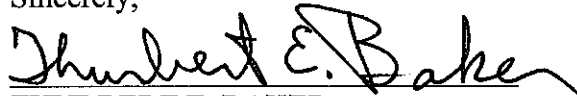
In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in each civil action, case, or proceeding, including, without limiting the generality of the foregoing, all adoptions, charters, certiorari, applications by personal representative for leave to sell or invest, trade name registrations, applications for change of name, and all other proceedings of a civil nature filed in the superior courts. The clerks of the superior courts shall collect such fees, and the fees so collected shall be remitted to the board quarterly or at such other time as the board may provide. It shall be the duty of the clerks of the superior courts to keep accurate records of the amounts due the board under this subsection, and such records may be audited by the board at any time. The sums remitted to the board under this subsection shall be used only for the purposes provided for in this chapter.

Prior opinions of the Attorney General also support the conclusion that the additional fee under O.C.G.A. § 15-21A-6.1(a) applies to the issuance of certificates of appointment and reappointment to notaries public. 1978 Op. Att’y Gen. 78-63 addresses the filings to which the additional fee for the Superior Court Clerks’ Retirement Fund of Georgia applies and concludes that the fee applies to “each and every proceeding related to charters or articles of incorporation.” *Id.* at 136. 1981 Op. Att’y Gen. 81-56 concludes that the fees for the Superior Court Clerks’ Retirement Fund of Georgia and the Sheriffs’ Retirement Fund of Georgia “should be charged and collected upon the filing of articles of amendment, articles of merger, and articles of dissolution as well as articles of incorporation.” *Id.* at 130. Related to the additional fees for the Sheriffs’ Retirement Fund of Georgia and the Superior Court Clerks’ Retirement Fund of Georgia, previously discussed, 1988 Op. Att’y Gen. U88-11 concludes “that the legislature intended these provisions reach each and every proceeding of a civil nature.”<sup>5</sup> *Id.* at 107. Based on the similarity between the language used in O.C.G.A. § 15-21A-6.1(a) and that used in O.C.G.A. §§ 47-14-51(a) and 47-16-61(a) as well as the prior interpretations of those Code sections discussed herein, the additional \$125.00 fee applies to each and every proceeding of a civil nature, including issuance of certificates of appointment and reappointment to notaries public.<sup>6</sup>

Therefore, it is my official opinion that the judicial operations fund fee imposed by O.C.G.A. § 15-21A-6.1(a) applies to the fee to be remitted to clerks of superior court for the issuance of certificates of appointment and reappointment to notaries public.

Issued this 27<sup>th</sup> day of July, 2010.

Sincerely,



THURBERT E. BAKER

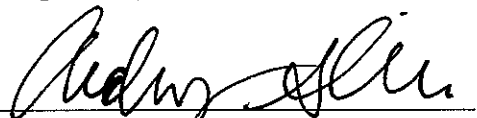
Attorney General

<sup>5</sup> HB 1055 repealed the fees for corporate related filings under O.C.G.A. § 15-6-77(g)(17), because corporate fees are now paid to the Secretary of State, and not to clerks of superior courts. However, the cited Attorney General Opinions are persuasive as illustrative of the breadth of the application of the additional fees.

<sup>6</sup> Further, the inclusion of “[i]ssuing certificate[s] of appointment and reappointment to notaries public” under “[m]iscellaneous fees,” in O.C.G.A. § 15-6-77(g), rather than under “[c]osts in civil cases,” under O.C.G.A. § 15-6-77(e), does not affect how notary fees should be treated under O.C.G.A. § 15-21A-6.1. Code Section 15-21A-6.1 expressly applies not only to “each civil action or case,” but also to “all other proceedings of a civil nature.” Thus, there is no requirement that a civil case be involved in order for the additional fee to be applied. If that were the reasoning, the additional fees under O.C.G.A. §§ 15-21A-6(a), 15-21A-6.1(a), 47-14-51(a) and 47-16-61(a) would apply only to those filings to which the fee in O.C.G.A. § 15-6-77(e) applies. This outcome would be directly inconsistent with historical practice and the conclusions of the Opinions of the Attorney General discussed herein which broadly apply the additional fees to filings beyond those addressed in O.C.G.A. § 15-6-77(e).

David R. Williams  
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Prepared by:

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Audrey Marie Seidle  
Assistant Attorney General