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RE: Application of Fees Imposed Under O.C.G.A. § 42-8-34(d)(1) & (2) in
Courts Utilizing Private Probation Services

Dear John:

This responds to your request for informal advice regarding the application of the fees imposed under O.C.G.A. § 42-8-34(d)(1) & (2).¹

O.C.G.A. § 42-8-34(d)(1) provides:

In every case that a court of this state or any other state sentences a defendant to probation or any pretrial release or diversion program under the supervision of the department, in addition to any fine or order of restitution imposed by the court, there shall be imposed a probation fee as a condition of probation, release, or diversion in the amount equivalent to \$23.00 per each month under supervision, and in addition, a one-time fee of \$50.00 where such defendant was convicted of any felony. The probation fee may be waived or amended after administrative process by the department and approval of the court, or upon

¹ As you know, statutory language in Georgia is interpreted so that "the ordinary signification shall be applied to all words." O.C.G.A. § 1-3-1(b); see *Risser v. City of Thomasville*, 248 Ga. 866 (1982). As set forth in this letter, the statutory provisions in issue appear to have a clear meaning based on the language used therein.

determination by the court, as to the undue hardship, inability to pay, or any other extenuating factors which prohibit collection of the fee; provided, however, that the imposition of sanctions for failure to pay fees shall be within the discretion of the court through judicial process or hearings. Probation fees shall be waived on probationers incarcerated or detained in a departmental or other confinement facility which prohibits employment for wages. All probation fees collected by the department shall be paid into the general fund of the state treasury, except as provided in subsection (f) of Code Section 17-15-13, relating to sums to be paid into the Georgia Crime Victims Emergency Fund. Any fees collected by the court under this paragraph shall be remitted not later than the last day of the month after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury.

O.C.G.A. § 42-8-34(d)(2) provides:

In addition to any other provision of law, any person convicted of a violation of Code Section 40-6-391 or subsection (b) of Code Section 16-13-2 who is sentenced to probation or a suspended sentence by a municipal, magistrate, probate, recorder's, mayor's, state, or superior court shall also be required by the court to pay a one-time fee of \$25.00. The clerk of court, or if there is no clerk the person designated to collect fines, fees, and forfeitures for such court, shall collect such fee and remit the same not later than the last day of the month after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury.²

As you have noted, O.C.G.A. § 42-8-30.1 provides as follows:

² O.C.G.A. § 16-13-2(b) addresses criminal violations involving the possession of marijuana. O.C.G.A. § 40-6-391 addresses criminal violations involving driving under the influence of alcohol, drugs or other intoxicating substances.

In any county where the chief judge of the superior court, state court, municipal court, probate court, or magistrate court has provided for probation services for such court through agreement with a private corporation, enterprise, or agency or has established a county or municipal probation system for such court pursuant to Code Section 42-8-100, *the provisions of this article relating to probation supervision services shall not apply to defendants sentenced in any such court.*

(emphasis added). The primary question that you have raised is whether the language of O.C.G.A. § 42-8-30.1 providing that where courts have private probation services, the provisions of Article 2 of Chapter 8 of Title 42 that relate to “probation supervision services” do not apply results in the fees imposed by O.C.G.A. § 42-8-34(d)(1) and (d)(2) not being applicable in courts using private probation services.

From my review, the language of O.C.G.A. § 42-8-34(d)(1) appears to fairly clearly relate to situations in which courts sentence defendants to probation or pretrial release or diversion programs under the supervision of the Department of Corrections. The \$23.00 fee imposed under O.C.G.A. § 42-8-34(d)(1) is expressly referred to as a “probation fee.” The one-time fee of \$50.00 applies only where the defendant is convicted of a felony but is triggered by the defendant being sentenced to probation or pretrial release or diversion under the supervision of the Department of Corrections. Thus, O.C.G.A. § 42-8-34(d)(1) appears to relate to “probation supervision services” by its express terms. Therefore, the fees imposed under O.C.G.A. § 42-8-34(d)(1) do not apply in superior, state, municipal, probate or magistrate courts that have “provided for probation services . . . through agreement with a private corporation, enterprise, or agency or . . . established a county or municipal probation system . . . pursuant to Code Section 42-8-100.”

From my review of O.C.G.A. § 42-8-34(d)(2), the language imposes a fee of \$25.00 in cases involving the possession of marijuana and cases involving driving under the influence of alcohol, drugs or other intoxicating substances. The fee imposed under O.C.G.A. § 42-8-34(d)(2) is triggered by the type of case and by the defendant being “sentenced to probation or a suspended sentence.” The fee is not referred to as a probation fee and is not an ongoing fee based on the “month[s] under supervision” as are the \$23.00 fees under O.C.G.A. § 42-8-34(d)(1). The fee imposed under O.C.G.A. § 42-8-34(d)(2) is not triggered by the defendant being sentenced to probation under the supervision of the Department of Corrections. Therefore, the fee imposed under O.C.G.A. § 42-8-34(d)(2) is not covered by the exception set forth in O.C.G.A. § 42-8-30.1 and does apply in superior, state, municipal, probate or magistrate courts including

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those that have "provided for probation services . . . through agreement with a private corporation, enterprise, or agency or . . . established a county or municipal probation system . . . pursuant to Code Section 42-8-100."

I hope that this informal advice is helpful. Please keep in mind that this is not an official opinion of the Attorney General. If you have any questions, please contact me.

Sincerely,



W. WRIGHT BANKS, JR.
Senior Assistant Attorney General

WWBjr/jgb

cc: David R. Williams, Executive Director