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John Earle, Project Manager
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Georgia Superior Court Clerks'
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RE: Additional Questions Regarding Seat Belt Violations

Dear John:

This responds to your request for informal advice regarding several issues that appear to have arisen since the issuance of 2008 Op. Att'y Gen. 08-4. A copy of 2008 Op. Att'y Gen. 08-4 is enclosed. As I understand your request, all of the issues relate to cases involving seat belt violations under O.C.G.A. § 40-8-76.1.

First, you have asked whether the amount imposed under O.C.G.A. § 36-15-9 for county law libraries should be collected in cases involving violations of O.C.G.A. § 40-8-76.1. O.C.G.A. § 40-8-76.1(e)(2) provides that "the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof." O.C.G.A. § 36-15-9 provides for "a sum not to exceed \$5.00, in addition to all other legal costs . . ." Therefore, as the amount provided for under O.C.G.A. § 36-15-9 is "in addition to all other legal costs," it appears that the additional amount should not be collected in cases involving violations of O.C.G.A. § 40-8-76.1 in light of the express limitations set forth in O.C.G.A. § 40-8-76.1(e)(2).

Second, you have asked whether the amount provided for the Sheriffs' Retirement Fund under O.C.G.A. § 47-17-60 should be withheld in cases involving violations of O.C.G.A. § 40-8-76.1. O.C.G.A. § 47-17-60(a) provides relevantly that

[t]he sum of \$2.00 shall be allocated to the board from each fine collected and each bond forfeited and collected in any criminal or quasi-criminal case for violation of state law, including traffic laws

2008 Op. Att’y Gen. 08-04 concludes that there is no criminal or quasi-criminal violation in cases involving violation of O.C.G.A. § 40-8-76.1(e) and that, therefore, “the required prerequisite to withholding funds for the Peace Officers’ Annuity and Benefit Fund of a ‘violation of state statutes, county ordinances, or municipal ordinances’ is not satisfied.” Much like the amount withheld for the Peace Officers’ Annuity and Benefit Fund, the amount required to be withheld for the Sheriffs’ Retirement Fund is triggered by “any criminal or quasi-criminal case for violation of state laws, including traffic laws” Therefore, under the reasoning of 2008 Op. Att’y Gen. 08-4, it appears that the amount for the Sheriffs’ Retirement Fund should not be withheld in cases involving violations of O.C.G.A. § 40-8-76.1.

Third, you have asked whether the amount provided for the Superior Court Clerks’ Retirement Fund under O.C.G.A. § 47-14-50 should be withheld in cases involving violations of O.C.G.A. § 40-8-76.1. O.C.G.A. § 47-14-50(b) provides:

The sum of \$1.75 shall be paid to the board from each fine collected and each bond forfeited and collected in any criminal or quasi-criminal case for violation of state law if the case is tried in any court of this state in which the clerk of such court is eligible for membership in this retirement fund. The collecting authority shall pay such amounts to the board each month or at such other times as the board may provide. Such amounts shall be due on the first day of the month following the month in which they were collected but shall be deemed timely if received by the board on or before the fifteenth day of the month; provided, however, that for purposes of calculating late payment penalties, the due date shall be the first day of the month. It shall be the duty of the collecting authority to keep accurate records of the amounts due the board. Such records may be audited by the board at any time. The sums remitted to the board under this Code section shall be used for the purposes provided for in this chapter.

(emphasis added). The amount required to be withheld for the Superior Court Clerks’ Retirement Fund is triggered by “any criminal or quasi-criminal case for violation of state law.” Therefore, under the reasoning of 2008 Op. Att’y Gen. 08-4, it appears that the amount for the Superior Court Clerks’ Retirement Fund should not be withheld in cases involving violations of O.C.G.A. § 40-8-76.1.

Finally, you have asked whether the amounts provided for in O.C.G.A. § 47-11-51 for the Probate Judges Retirement Fund should be collected in cases involving violations of O.C.G.A. § 40-8-76.1. O.C.G.A. § 47-11-51(a) provides:

In every criminal and quasi-criminal case for violating state statutes or traffic laws, which case is before a judge of the probate court and in which case a fine is collected or a bond is forfeited, a sum based upon the scale set out below for each case shall be collected by the judge or other collecting authority. Such bond or fine shall be construed to include costs. Such sums shall be paid upon the following scale:


For any fine or bond forfeiture of	
more than \$4.00, but not more	
than \$25.00.....	\$ 1.00
For any fine or bond forfeiture	
of more than \$25.00, but not more	
than \$50.00.....	1.50
For any fine or bond forfeiture of	
more than \$50.00 but not more	
than \$100.00.....	2.00
For any fine or bond forfeiture of	
more than \$100.00.....	2.50

(emphasis added). Much like the amount withheld for the Peace Officers' Annuity and Benefit Fund, the amount required to be withheld for the Probate Judges' Retirement Fund is triggered by "every criminal or quasi-criminal case for violating state statutes or traffic laws" Therefore, under the reasoning of 2008 Op. Att'y Gen. 08-4, it appears that the amount for the Probate Judges' Retirement Fund should not be withheld in cases involving violations of O.C.G.A. § 40-8-76.1.

I hope that this informal advice is responsive to your request. If you have any questions, please contact me.

John Earle
October 2, 2008
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Sincerely,



W. WRIGHT BANKS, JR.
Senior Assistant Attorney General

WWB/jgb

enclosure

cc: David R. Williams, Executive Director