



GEORGIA DEPARTMENT OF LAW

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September 27, 2016

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

Re: Bond Surcharge Calculations

Dear Mr. Earle:

This responds to your request for informal advice regarding whether applicable surcharges are included in amounts refunded to sureties, where a bond plus applicable surcharges has been paid and forfeited and the monies disbursed.

O.C.G.A. § 15-21-73 provides for certain surcharges as additional penalties to be added to the fine and to the amount of any bail or bond established by the court.¹ Where additional amounts are collected when bonds are posted, O.C.G.A. § 15-21-73 makes clear that the additional amounts collected are not to be paid over to the Authority unless the bond is forfeited. However, in the event of a forfeiture of bail or bond, these additional amounts shall be paid over and then deposited by the Authority into the general treasury.² Once deposited into the general treasury, these additional amounts cannot be refunded to sureties except by appropriation made by law.³ Ga. Const. Art. III, § IX, Para. I provides as follows:

No money shall be drawn from the treasury except by appropriation made by law.

The text is rather straightforward, making it difficult to conclude that surcharges deposited into the general treasury could then be returned to a surety absent the requisite appropriations and compliance with other constitutional limitations.

Additionally, O.C.G.A. § 17-6-72(d) provides, in part, as follows:

(d) In cases in which subsection (e) of this Code section is not applicable, on application filed within 120 days from the payment of judgment, the court shall order remission under the following conditions:

¹ 1996 Op. Att'y Gen. No. U96-8.

² O.C.G.A. §§ 15-21-73(a); 15-21-74.

³ Ga. Const. Art. III, § IX, ¶ I.

(1) Provided the bond amount has been paid within 120 days after judgment and the delay has not prevented prosecution of the principal and upon application to the court with prior notice to the prosecuting attorney of such application, said court shall direct remission of 95 percent of the bond amount remitted to the surety if the principal is produced or otherwise appears before the court that has jurisdiction of the bond within such 120 day period. Should the surety, within two years of the principal's failure to appear, locate the principal in the custody of the sheriff in the jurisdiction where the bond was made or in another jurisdiction causing the return of the principal to the jurisdiction where the bond was made, apprehend, surrender, or produce the principal, if the apprehension or surrender of the principal is substantially procured or caused by the surety, or if the location of the principal by the surety causes the adjudication of the principal in the jurisdiction in which the bond was made, the surety shall be entitled to a refund of 50 percent of the bond amount. The application for 50 percent remission shall be filed no later than 30 days following the expiration of the two-year period following the date of judgment; or

(2) Remission shall be granted upon condition of the payment of court costs and of the expenses of returning the principal to the jurisdiction by the surety.

(emphasis added). O.C.G.A. § 17-6-72(e) goes on to state as follows:

(e)(1) If, within 120 days from payment of the judgment, the surety surrenders the principal to the sheriff or responsible law enforcement officer, or said surrender has been denied by the sheriff or responsible law enforcement officer, or the surety locates the principal in custody in another jurisdiction, the surety shall only be required to pay costs and 5 percent of the face amount of the bond, which amount includes all surcharges. If it is shown to the satisfaction of the court, by the presentation of competent evidence from the sheriff or the holding institution, that said surrender has been made or denied or that the principal is in custody in another jurisdiction or that said surrender has been made and that 5 percent of the face amount of the bond and all costs have been tendered to the sheriff, the court shall direct that the judgment be marked satisfied and that the writ of fieri facias be canceled.

(emphasis added). The statute makes clear that only 95 percent of the *bond amount* may be remitted to the surety if certain conditions are met. (Emphasis added.) Further, O.C.G.A. § 17-6-72(d) makes no mention of any additional fees or surcharges with the remitted amounts, which suggests that such surcharges are not meant to be included. In contrast, O.C.G.A. § 17-6-72(e) clearly specifies surcharges in the amount to be paid in the particular situation described.

Under the “venerable principle of statutory construction *expression unius est exclusion alterius*: the express mention of one thing implies the exclusion of another.”⁴ The canons of construction also tell us that when legislators consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant.⁵ As such, inclusion of surcharges in one subsection demonstrates the legislature’s intent to exclude surcharges in other sections where not explicitly mentioned or otherwise referenced. Thus, where a bond plus applicable surcharges has been paid and forfeited and the monies disbursed and the provisions of O.C.G.A. § 17-6-72(d) are then met, the court should refund the surety 95 percent of the bond, as opposed to 95 percent of the sum of the bond and applicable surcharges.

In regard to your question as to what amount is used to calculate applicable surcharges and deductions, the original bond amount is used, as opposed to using five (5) percent or some other reduced amount. As amended by House Bill 1 EX, O.C.G.A. § 15-21-73(a) provides as follows:

- (1) In every case in which any state court, probate court, juvenile court, police, recorder’s, or mayor’s court, municipal court, magistrate court, or superior court in this state shall impose a fine, which shall be construed to include costs, for any criminal or quasi-criminal offense against a criminal or traffic law, including civil traffic violations and violations of local criminal ordinances, of this state or political subdivision thereof, there shall be imposed as an additional penalty a sum equal to:
 - (A) The lesser of \$50.00 or 10 percent of the original fine; plus
 - (B) An additional 10 percent of the original fine.
- (2) At the time of posting bail or bond in any case involving a violation of a criminal or traffic law of this state or political subdivision thereof, an additional sum equal to:
 - (A) The lesser of \$50.00 or 10 percent of the original amount of bail or bond; plus
 - (B) The lesser of an additional \$50.00 or 10 percent of the original amount of bail or bondshall be posted. In every case in which any state court, probate court, municipal court, magistrate court, recorder’s court, mayor’s court, or superior court shall order the forfeiture of bail or bond, the additional amounts provided for in this paragraph shall be paid over as provided in Code Section 15-21-74.

(Emphasis added). As the statute indicates, additional amounts are calculated using the full amount of the original fine, bail, or bond.⁶

⁴ *Dep’t of Human Res. v. Hutchinson*, 217 Ga. App. 70, 72 (1995).

⁵ *Deal v. Coleman*, 294 Ga. 170, 172 (2013).

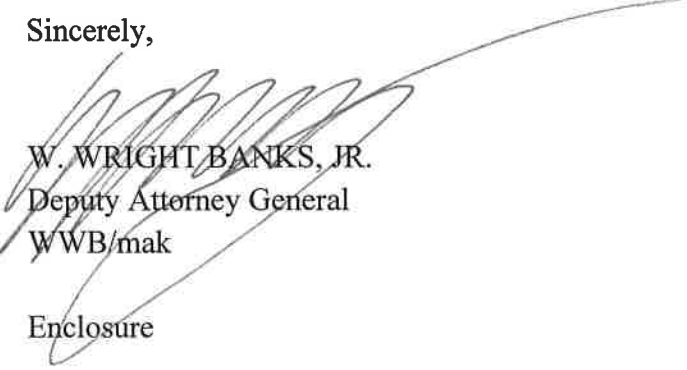
⁶ This same issue is largely addressed in informal advice to the Authority dated June 22, 2004. A copy of the prior advice is enclosed.

Mr. John Earle
September 27, 2016
Page 4

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

Please keep in mind that his letter is informal advice and does not constitute the official or unofficial opinion of the Attorney General.

Sincerely,



W. WRIGHT BANKS, JR.
Deputy Attorney General
WWB/mak

Enclosure



THURBERT E. BAKER
ATTORNEY GENERAL

Department of Law State of Georgia

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

VIA FACSIMILE/U.S. MAIL

June 22, 2004

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(404) 651-6247
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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:

This follows up our prior conversations regarding the provisions of O.C.G.A. § 15-21-73(a), as amended by House Bill 1 EX.

As amended by House Bill 1 EX, O.C.G.A. § 15-21-73(a) provides as follows:

- (1) In every case in which any state court, probate court, juvenile court, police, recorder's, or mayor's court, municipal court, magistrate court, or superior court in this state shall impose a fine, which shall be construed to include costs, for any criminal or quasi-criminal offense against a criminal or traffic law, including civil traffic violations and violations of local criminal ordinances, of this state or political subdivision thereof, there shall be imposed as an additional penalty a sum equal to:
 - (A) The lesser of \$50.00 or 10 percent of the original fine; plus
 - (B) An additional 10 percent of the original fine.
- (2) At the time of posting bail or bond in any case involving a violation of a criminal or traffic law of this state or political subdivision thereof, an additional sum equal to:
 - (A) The lesser of \$50.00 or 10 percent of the original amount of bail or bond; plus
 - (B) The lesser of an additional \$50.00 or 10 percent of the original amount of bail or bond

David R. Williams
June 22, 2004
Page 2

shall be posted. In every case in which any state court, probate court, municipal court, magistrate court, recorder's court, mayor's court, or superior court shall order the forfeiture of bail or bond, the additional amounts provided for in this paragraph shall be paid over as provided in Code Section 15-21-74.

(emphasis added). As amended by House Bill 1EX, O.C.G.A. § 15-21-74 provides relevantly that:

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 and forfeited bonds and shall be paid over to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there following, to be deposited by the authority into the general treasury.

(emphasis added). As I have previously indicated in our conversations regarding the provisions of O.C.G.A. §§ 15-21-73 and 15-21-74, the language appears to be clear that the additional amounts required by O.C.G.A. § 15-21-73(a)(2) are required to be paid "[a]t the time of posting bail or bond" and that such amounts are not required to be paid over to the Authority under O.C.G.A. § 15-21-74 unless they are forfeited.

In construing the similar bond posting provision in O.C.G.A. § 15-21-93(a)(2), 1990 Op. Att'y Gen. U90-4 indicates that the additional amount is to be collected when bail or bond is posted. 1996 Op. Att'y Gen. U96-8 indicates that the amount required by O.C.G.A. § 15-21-93(a)(2) "is also to be added to the amount of any bail or bond established by the Court."

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

Please keep in mind that this letter is informal advice and does not constitute the official or unofficial opinion of the Attorney General.

David R. Williams
June 22, 2004
Page 3

Sincerely,



W. WRIGHT BANKS, JR.
Senior Assistant Attorney General

WWB/jgb