Department of Law
State of Georgia

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VIA FACSIMILE/U.S. MAIL

May 21, 2004

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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 discussion of last week regarding Section 5 of the above-referenced Bill.

Section 5 amends the penalties provided for in O.C.G.A. § 15-21-73(a)(1) to require that a penalty of the lesser of $50.00 or 10% of the original fine plus an additional fee of 10% of the original fine be collected in every criminal or quasi-criminal case including traffic, civil traffic and local criminal ordinances. The amendment adds the additional penalty of 10 percent. Section 5 also amends O.C.G.A. § 15-21-73(a)(2) to require the posting of the lesser of $50.00 or 10% of the original amount of bond or bail plus the lesser of an additional $50.00 or 10% of the original amount of bond or bail. The amendment adds the provision for another $50.00 or 10%.

As amended, O.C.G.A. § 15-21-73(a) will provide 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

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.

Section 5 also amends O.C.G.A. § 15-21-74 to provide that all sums provided for in O.C.G.A. § 15-21-73 are to be collected and paid over to the Authority on a monthly basis. The sums have to be paid to the Authority by the last day of the following month. The Authority is required to pay the amounts paid over into the State treasury. The Authority is also required to submit a quarterly report to the Office of Planning and Budget, the Legislative Budget Office and the Senate Budget Office within sixty days of the end of the quarter. The additional penalties and postings provided for in O.C.G.A. § 15-21-73(a) apply in "state court, probate court, juvenile court, police, recorder's, or mayor's court, municipal court, magistrate court, or superior court." The additional amounts required to be posted under O.C.G.A. § 15-21-73(a)(2) are only required to be paid over to the Authority when the applicable court orders the forfeiture of the bail or bond.

The General Assembly originally enacted the Georgia Peace Officer and Prosecutor Training Fund Act set forth in O.C.G.A. §§ 15-21-70 through 15-21-77 in 1983. Ga. Laws 1983, p. 1094. At that time, this Office issued an Official and an Unofficial Opinion regarding its provisions. 1983 Op. Att'y Gen. 83-80; 1983 Op. Att'y Gen. U83-51. Copies of these Opinions are enclosed.

O.C.G.A. § 15-21-74 provides that the court officer charged with collecting moneys arising from fines and forfeited bonds shall assess and collect the amounts provided for in O.C.G.A. § 15-21-73. From recent conversations with clerks of court, it is my understanding that clerks of court and other court officers regularly collect such amounts. 1983 Op. Att'y Gen. 83-80 illustrates the various officials that are court officers and that collect penalties and fees in various circumstances and concludes that the sentencing

judge does not have to include the amount provided for in O.C.G.A. § 15-21-73 in an order of the court in order for it to be collected by the court officer.

In our conversation of last week, you asked specifically if the increased penalties and bond amounts apply to cases where the offense, or alleged offense, was committed prior to the effective date of the amendment to O.C.G.A. § 15-21-73.[1] 1983 Op. Att'y Gen. U83-51 addressed this question and concluded that the additional charges should be collected only in cases in which the offense occurred after July 1, 1983, the effective date of the legislation enacting O.C.G.A. §§ 15-21-70 through 15-21-77. However, the analysis of 1983 Op. Att'y Gen. U83-51 does not clearly distinguish between the additional fine and the additional bail or bond amount imposed by O.C.G.A. § 15-21-73(a).

A 1990 Unofficial Opinion of this Office addresses a very similar statute which provides for an additional bail or bond amount in O.C.G.A. § 15-21-93(a)(2) and concludes that "[t]he additional assessments on bail or bond are not part of the court's sentence, but are merely a surcharge. Since these surcharges are not punitive and not a part of the sentence, they may be applied on or after January 1, 1990, regardless of when the crime was committed." 1990 Op. Att'y Gen. U90-4 (copy enclosed).

Because it is more recent and deals specifically with a very similar bond provision, and because its analysis is more fully supported by case law, Op. U90-4 should be followed in regard to the increase in bail and bond amounts under Section 5 of House Bill 1 EX.

The Georgia Constitution provides that:

> No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed.

Ga. Const. Art. I, § I, ¶ X. As recognized by the Georgia Supreme Court:

> The ex post facto clause of the Georgia Constitution prohibits the infliction of a greater punishment than was permitted by the law in effect at the time of the commission

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[1] At the suggestion of one of the Authority members, I have specifically reviewed O.C.G.A. § 16-1-9, but do not believe that it addresses the issue presented as it appears to primarily clarify that Title 16 does not apply to crimes committed before July 1, 1969.

> of the offense, the subsequent criminal prosecution of an act which was not a crime when done, the alteration of the quality or degree of the charge, the requirement of less or different evidence than was necessary at the time of the violation, and the deprivation of any substantial right or immunity possessed at the time the defendant committed the act.

Hamm v. Ray, 272 Ga. 659, 659 (2000).

The United States Constitution also prohibits the states from passing ex post facto laws. U.S. Const. Art. I, § X. The United States Supreme Court has recognized the following categories of acts that implicate the ex post facto clause:

> 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offence, in order to convict the offender.

Collins v. Youngblood, 497 U.S. 37, 42 (1990) (citations and emphasis omitted). The Collins decision indicates that the above-described categories define "the prohibition which may not be evaded" under the ex post facto clause. 497 U.S. at 46. The Supreme Court has recognized that courts should not stray beyond the four categories described in Collins. Carmell v. Texas, 529 U.S. 513, 539 (1990).

In Hahn v. State, the Court of Appeals held that a statute allowing a period of confinement for first offenders could not be applied where the crime was actually committed prior to the enactment of the statute. 166 Ga. App. 71, 72 (1983). The Court of Appeals recognized as follows:

> Although that statute [providing for confinement] had become effective several weeks before appellants were sentenced thereunder, the only statute under which appellants could be constitutionally sentenced as first

> offenders was that which was in effect at the time the crime was actually committed on August 20, 1982. That statute, former O.C.G.A. § 42-8-60 (Code Ann. § 27-2727), made no provision whatsoever for sentencing a first offender to a term in confinement but, as noted above, provided only that a first offender sentenced thereunder could be placed on probation.

166 Ga. App. at 72. In the Hamm decision cited above, the Georgia Supreme Court upheld the State Board of Pardons and Paroles' imposition of an electronic monitoring fee and a monthly fee for the Georgia Crime Victims Emergency Fund that were not imposed at the time of the criminal conviction. 272 Ga. 659, 659 (2000). In doing so, the Court stated that:

> Reparation and restitution are authorized conditions of parole under O.C.G.A. § 42-9-44(a). The imposition of fees to reimburse Hamm's victims and the State for the costs of his crimes neither increased his punishment nor affected his substantive rights, but instead constituted a more detailed requirement regarding his obligation to make reparation and restitution as a condition of parole. Moreover, the state ex post facto clause, like its federal counterpart, does not require that the courts engage in micromanagement of the endless array of the Board's adjustments to its parole procedures, merely because there is some remote risk of impact on the duration of confinement. Accordingly, we hold that the Board's imposition of the special fee conditions does not violate Georgia's ex post facto clause.

272 Ga. at 659 (citations omitted).[2] The Hamm decision appears consistent with the conclusion of 1990 Op. Att'y Gen. U90-4 regarding the additional bail and bond amounts in O.C.G.A. § 15-21-93(a)(2). In Cannon v. State, the Georgia Supreme Court rejected an ex post facto challenge to the application of a more specific restitution statute to an offense committed prior to its effective date where the statute in effect at the time of the criminal violation authorized restitution as a condition of probation. 246 Ga. 754, 755 (1980). In doing so, the Court indicated that the later enacted statute did not affect the substantive rights of the accused, but was instead merely a more detailed enactment regarding restitution. 246 Ga. at 755.

In Holley v. State, the Georgia Court of Appeals concluded that the imposition of a greater penalty based on a statute enacted after the commission of the offense would violate the prohibition of ex post facto laws. 157 Ga. App. 863, 867-68 (1981). In doing so, the Court of Appeals specifically stated as follows:

> At the time of the offense here committed (January, 1980), the maximum fine that could be imposed for possession of more than 100 but less than 1,000 pounds of marijuana was $5,000. Even though appellant was not convicted of possessing 179 pounds of marijuana until August, 1980, well after March 20, 1980 when possession of 179 pounds of marijuana authorized a fine of up to $25,000, any attempt to impose a greater punishment based upon an after-passed law, and the later enacted statute, if made applicable to the appellant, would of necessity be ex post facto law.

157 Ga. App. at 867-68 (citations omitted).

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[2] An Eleventh Circuit Court of Appeals' decision holds that changes in standards regarding the availability of bail pending appeal are procedural and not prohibited by the ex post facto clause. United States v. Ballone, 762 F.2d 1381, 1383 (11th Cir. 1985). While the specific rationale relied upon, a distinction between procedural and substantive changes, may no longer be sound, the result in Ballone remains sound under the general principals of subsequent decisions. See Collins v. Youngblood, 497 U.S. 37, 46 (1990) ("[B]y simply labeling a law 'procedural,' a legislature does not thereby immunize it from scrutiny under the Ex Post Facto Clause"; Hamm v. Ray, 272 Ga. 659 (2000) (it was not an ex post facto violation when "[t]he Board required Hamm to pay an electronic monitoring fee and to make a $10 monthly payment to the Georgia Crime Victim Emergency Fund" as a condition of parole).

Courts of other states have reached results like that in Holley. In Willner v. Department of Professional Regulation, the Court of Appeals of Florida held that the application of a statute authorizing increased fines to violations that occurred prior to the statute's effective date would violate the ex post facto provisions of the state and federal constitutions. 563 So. 2d 805, 806 (Fla. App. 1990). On ex post facto grounds, the Arizona Court of Appeals has reversed a trial court's imposition of restitution and a monetary assessment in a juvenile case based on a statute enacted after the commission of the offense. In the Matter of the Appeal In Maricopa County Juvenile Action No. J-92130, 677 P.2d 943, 946 (Ariz. App. 1984). On ex post facto grounds, the Arkansas Supreme Court has reversed a trial court's award of restitution based on a statute enacted after the commission of the offense that increased the amount of restitution that could be awarded. Eichelberger v. Arkansas, 916 S.W. 2d 109, 112 (Ark. 1996). The Wyoming Supreme Court has reached a similar result in a case involving an increased administrative penalty based on a statute enacted after the commission of the violation. Ballard v. Wyoming Pari-Mutuel Commission, 750 P.2d 286, 293 (Wyo. 1988). There are other decisions that reach similar results. People v. Rayburn, 630 N.E.2d 533, 538 (Ill. App. 1994); State v. Kaster, 469 N.W. 2d 671, 673-74 (Iowa 1991).

From my reading of the authorities referenced herein, I conclude that the increased penalty amounts in O.C.G.A. § 15-21-73(a)(1) will not apply to cases where the offense, or alleged offense, was committed prior to the effective date of the amendment to O.C.G.A. § 15-21-73(a)(1). I further conclude that the increased bail and bond amounts in O.C.G.A. § 15-21-73(a)(2) are procedural and may be applied in cases regardless of the date upon which the offense was committed.

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

Sincerely,

W. WRIGHT BANKS, JR.
Senior Assistant Attorney General

WWB/me
Enclosures

forum.

It is true that courts possess a number of inherent powers (*Johnson v. State,* 177 Ga. 881 (1933)) which are not subject to legislative control although some have been codified. See *Lowe v. Taylor,* 180 Ga. 654 (1935). Among the latter is the power:

> "To control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto." O.C.G.A. § 15-1-3 (4).

While the foregoing is a broad provision, it is not unlimited. In *State v. Colquitt,* 147 Ga. App. 627 (1978), it was held that a court's power to control proceedings does not authorize actions which take away or abridge any right of a party under the law. This power may therefore not be read to authorize a court to direct its clerk to transfer or refuse to accept cases because jurisdiction also lies in other courts.

It is also true that certain courts possess supervisory power over other courts, but this does not include the power to transfer properly filed cases or prohibit the filing of cases in a proper court. *Burgess v. Nabers,* 122 Ga. App. 445 (1970).

Accordingly, it is my unofficial opinion that the courts of Georgia may not limit the suitor's choice of forum when jurisdiction of a cause of action is vested in more than one court.

UNOFFICIAL OPINION U83-51

To: District Attorney
Alapaha Judicial Circuit

August 10, 1983

Re: The surcharge authorized by the Peace Officer and Prosecutor Training Fund Act of 1983 should not be collected in cases in which offenses occurred prior to July 1, 1983.

The Peace Officer and Prosecutor Training Fund Act of 1983 (O.C.G.A. §§ 15-21-70 et seq.; Ga. Laws 1983, p. 1094 et seq.) became effective July 1, 1983. See O.C.G.A. § 1-3-4 (a). The Act provides that in every criminal or traffic case in which a fine is imposed, the lesser of $50 or 10 percent of the fine shall be imposed as an additional penalty. O.C.G.A. § 15-21-73 (a) (1). The same amount is also to be imposed when bail or bond is posted, which sum is forfeited if the bail or bond is forfeited. O.C.G.A. § 15-21-73

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(a) (2). The Act provides that these funds are to be turned over to the Commissioner of the Department of Revenue on a monthly basis. O.C.G.A. § 15-21-74.

You have inquired whether these additional sums are to be charged and collected in cases based on acts committed prior to July 1, 1983, but in which trial and/or conviction is after that date. For the reasons discussed below, these surcharges should be collected only in cases in which the offense occurred on or after July 1, 1983.

The State of Georgia is prohibited from passing ex post facto laws. U.S. Const., Art. I, Sec. X, Par. I; Ga. Const. 1983, Art. I, Sec. I, Par. X. A statute violates the *ex post facto* clause if it "increases punishment beyond what was prescribed when the crime was consummated." *Weaver v. Graham,* 450 U.S. 24, 30 (1981). "[A]ny statute . . . which makes more burdensome the punishment for a crime . . . is prohibited as *ex post facto.*" *Beazell v. Ohio,* 269 U.S. 167, 169-70 (1925) (emphasis in original). A statute is an ex post facto law if it imposes a greater punishment than was applicable when the crime was committed. *Todd v. State,* 228 Ga. 746 (1972).

The surcharge is an "additional penalty" in the words of the statute itself. See O.C.G.A. §§ 15-21-71, 15-21-73 (a) (1). Thus, it is clear that the surcharge is punishment which cannot be constitutionally applied to offenses occurring prior to July 1, 1983. Moreover, there is no language in the statute which indicates that the General Assembly intended the statute to operate retroactively.

For the reasons stated above, it is my unofficial opinion that the surcharge authorized by the Peace Officer and Prosecutor Training Fund Act of 1983 may not be collected in cases based on acts committed prior to July 1, 1983.

UNOFFICIAL OPINION U83-52

To: Probate Judge
Walton County

August 11, 1983

Re: Provisions of the new Georgia "DUI Statute" which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to defendants

nonfixed registration places which are to be designated in even-numbered years. Therefore, in answer to your first question, O.C.G.A. § 21-2-218 (b) requires that additional voter registration places be designated by the chief registrar of qualifying counties in even-numbered years in addition to any such fixed voter registration sites which are established on a permanent basis.

The Code section does not directly address the issue of funding for these additional sites. However, the section provides that the chief registrar "shall designate and staff" on a full or part-time basis these additional registration sites. Therefore, unless some provision can be made for volunteer staffing, the county must bear the expense of staffing and operating these additional sites. Of course, the persons staffing these additional registration places must be sworn and be deputy registrars of the county. O.C.G.A. §§ 21-2-213, 21-2-214.

Based upon the foregoing, it is my official opinion that O.C.G.A. § 21-2-218 (b) requires that additional voter registration places be established in counties having a population of more than 100,000 in addition to any other fixed places in the county which are established on a permanent basis and, unless voluntary staffing can be arranged, these temporary voter registration places must be staffed and operated at county expense.

OPINION 83-80

To: Director, Criminal Justice Coordinating Council

December 20, 1983

Re: Various questions concerning the Peace Officer and Prosecutor Training Fund Act.

You have requested my official opinion on several questions regarding the Peace Officer and Prosecutor Training Fund Act, which was enacted by the General Assembly at its 1983 Session. O.C.G.A. § 15-21-70 et seq. (Ga. Laws 1983, p. 1094). Please accept this letter as my official opinion. Note that I have responded to your questions in the same order in which they were posed.

You first ask whether the Act may be implemented or enforced by administrative or court rules. You mention the Department of Revenue and the Georgia Supreme Court as authorities which might issue such rules. With respect to the authority of the De-

partment of Revenue, it should first be noted that departmental rules and regulations cannot be promulgated without clear legislative authority. See *Pope v. Cokinos*, 231 Ga. 79, 80-81 (1973). The Commissioner of the Revenue Department is authorized by O.C.G.A. § 48-2-12 to adopt rules and regulations for the enforcement of the Revenue Title and, with respect to other statutes outside of the Revenue Title, to prescribe forms which "he deems necessary for the administration and enforcement of . . . any law which it is his duty to administer." This section would permit the commissioner to prescribe forms to be used to administer and enforce that part of the Act in question here which requires that moneys collected pursuant to the Act be paid to the Commissioner of the Department and that part which requires the department to pay said funds into the general treasury and make reports to the Office of Planning and Budget and the Legislative Budget Office.

The Supreme Court, on the other hand, may through its rules regulate the practice of law and the court's own operations and procedures. Note that the Supreme Court is also required by the 1983 Constitution to "adopt and publish uniform court rules and record-keeping rules which shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions." Ga. Const. 1983, Art. VI, Sec. IX, Par. I. See also, Ga. Const. 1983, Art. VI, Sec. I, Par. V; *Perdue v. Tyler*, 241 Ga. 299, 301 (1978). It is feasible that the Supreme Court might under this authority adopt rules to implement the Act in question here.

Your second question asks which "court officer" is responsible for "assessing, collecting, and remitting to the Department of Revenue" the sums described in the Act. According to § 15-21-74:

> "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 Commissioner of the Department of Revenue by the last day of the month there following, to be deposited by him into the general treasury."

The funds in question are, of course, the additional penalties which are earmarked for training purposes. The short answer to your question is that there is no single "court officer" who has the duties in question. This matter has been raised in numerous other requests for opinions to the Attorney General. As recently as October 3, 1983, an unofficial opinion (Op. Att'y Gen. U83-62) to a district attorney made the point that under Georgia law prosecuting

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attorneys, sheriffs, and clerks of courts all have duties respecting the collection of fines and forfeitures in criminal cases. See also, Ops. Att'y Gen. U74-6, U74-52, U73-24, U70-179. Note that I have enclosed a copy of the October 3, 1983 unofficial opinion. I should also add that in many cases probation officers must collect fines. O.C.G.A. § 42-8-31 et seq. Thus, each of these court officers is responsible for assessing and collecting the described penalty in any case in which he is "charged with the duty of collecting moneys arising from fines and forfeited bonds." O.C.G.A. § 15-21-74.

Your next question has to do with the meaning of "fine" as used in § 15-21-73. According to subsection (a) (1):

> "In every case in which any state court; probate court; municipal court, whether known as a mayor's, recorder's, or police court; or superior court in this state shall impose a fine, which shall be construed to include costs, for any offense against a criminal or traffic law of this state or political subdivision thereof, there shall be imposed as an additional penalty a sum equal to the lesser of $50.00 or 10 percent of the original fine."

You ask whether a criminal sentence requiring community service, restitution, or court costs may be considered a fine. Georgia law is clear that a fine is monetary punishment, other than restitution, imposed in a criminal case. E.g., O.C.G.A. § 17-10-3. However, in § 15-21-73 (a) (1), "fine" is defined so as to include costs. Therefore, a sentence imposing no fine in the traditional sense, but which imposes costs against a criminal defendant, triggers the penalty prescribed by § 15-21-73. If, for example, a court did not impose a traditional fine but ordered a criminal defendant to pay $15 in court costs, § 15-21-73 would require the offender to pay an additional $1.50. However, if a sentence imposed neither costs nor a traditional fine, no penalty could be imposed under § 15-21-73.

You have also asked what the expression "every case" means in § 15-21-73. In this connection, you inquire whether a criminal case which is dismissed or disposed of by nolle prosequi is covered by the language in § 15-21-73. The best way to respond to this question is to point out that the penalty prescribed by the Act is not triggered unless there is a court-imposed fine or costs. Of course, a fine can only be imposed after conviction. Moreover, costs may not be required of a defendant "until after trial and conviction." O.C.G.A. § 17-11-1. Costs may not be imposed after a nolle prosequi. *Hunter v. State,* 104 Ga. App. 576, 577 (1961). Thus, § 15-21-73 does not apply to a criminal case until there is a conviction.

You have next inquired whether a judge must order payment of the penalty prescribed by the Act. You have pointed out that a question has arisen as to whether the sentencing judge must specifically order payment of the penalty. Additional correspondence from your office indicates that at least one judicial circuit has implemented the Act by subtracting the penalty from the amount of the fine imposed by the sentencing judge. Under this interpretation, if a judge imposes a fine of $750, he is deemed to have actually imposed a fine of $700 with $50 as a penalty. As I understand the Act, this approach is not required. Under § 15-21-73 an "additional penalty" is imposed in every criminal case in which a fine or court costs are required. Moreover, an "additional sum" must be posted with every criminal bond. According to § 15-21-74, "the court officer charged with the duty of collecting moneys arising from fines and forfeited bonds" shall assess this additional penalty and sum. Thus, according to the clear language of the statute, a sentencing judge is not required to make the additional penalty part of his sentence. Both the additional penalty and the additional sum in the case of bonds may be added on by the respective court officer whose duty it is to collect the moneys in each particular case. Although it is not required that a court order payment of the penalty, it certainly would not undermine the validity of the additional assessment if a court ordered payment. Moreover, it would probably avoid misunderstanding. With respect to the revocation of probation on account of a failure to pay the additional penalty, as long as it is a condition of probation that the probationer not violate the laws of the state it would appear that revocation could be accomplished even though the additional penalty were not specifically prescribed by the sentencing judge. However, as a matter of practice the penalty should certainly be included as a condition in the order of probation.

Your last question has to do with whether penalties may be added which, together with the fine, would exceed the maximum fine permitted by law. According to the clear terms of § 15-21-73, the penalty in question is in addition to the fine. Therefore, even if a maximum fine is imposed, the penalty may be assessed on top of the fine.

I have given you my official opinion as set out above. I trust that it is sufficient for your purposes. As you requested, I have also enclosed a copy of an unofficial opinion which relates to the application of the Peace Officer and Prosecutor Training Fund Act to crimes occurring prior to its effective date.

UNOFFICIAL OPINION U90-3

To: Representative, District 43 January 26, 1990

Re: Local school funds may not be used to pay chamber of commerce membership dues of the county school superintendent.

This responds to your January 24, 1990 request for my unofficial opinion of the propriety of spending local school funds to pay the chamber of commerce membership dues of the county school superintendent. The funds may not be used for that purpose.

Local school funds may be spent "only for the support and maintenance of public schools . . . public education . . . and activities necessary or incidental thereto . . ." Ga. Const. 1983, Art. VIII, Sec. VI, Par. I (b). Payment of civic association dues is unnecessary to the operation of public schools and, in my view, not incidental to a school purpose. Local school funds "shall be used for *educational purposes* . . . and for no other purpose." O.C.G.A. § 20-2-411. (Emphasis added.)

It is my unofficial opinion that local school funds may not properly be used to pay chamber of commerce membership dues of a school superintendent.

Prepared by:

MARION O. GORDON
First Assistant Attorney General

UNOFFICIAL OPINION U90-4

To: Court Administrator January 31, 1990
First Judicial Administrative District

Re: O.C.G.A. § 15-21-93 (a) (2), a portion of the Jail Construction and Staffing Act, requires that when bail or bond is posted in any case involving a violation of a criminal law or traffic law of the state or an ordinance of a political subdivision thereof, an additional sum equal to 10 percent of the original amount of the bail or bond must be posted. The provisions of this statute should not be applied, however, except to bail or bond posted by an individual who has been adjudged guilty. The fee on bail or bond should be

applied in all applications for bail or bond made after January 1, 1990.

In your recent letter and telephone call to the Attorney General, you have requested an opinion concerning the proper interpretation of O.C.G.A. § 15-21-93 (a) (2), a part of the "Jail Construction and Staffing Act." This Act became effective January 1, 1990. Specifically, you have questioned whether this Code section authorizes a sheriff to add an additional 10 percent sum to surety bonds posted against property. Under the clear language of the statute, the sheriff is not only authorized to add the 10 percent additional fee, but such an additional fee is mandatory. The Code section specifically provides that:

> "At the time of posting bail or bond in any case involving a violation of a criminal or traffic law of this state or ordinance of a political subdivision thereof, an additional sum equal to 10 percent of the original amount of bail or bond shall be posted."

The clear language of this Code section admits of no ambiguity; so long as the jurisdiction has elected to participate in this program, when bail or bond is posted "in any case" involving violations of the specified statutes and ordinances, the additional 10 percent "shall be posted."

In interpreting statutes, one must look diligently for the intention of the General Assembly. O.C.G.A. § 1-3-1 (a). The ordinary signification is to be applied to all words. O.C.G.A. § 1-3-1 (b). Where the statute is plain and susceptible of but one reasonable construction, the plain language of the statute is controlling. *Hollowell v. Jove*, 247 Ga. 678 (1981).

Review of the statute does not, however, resolve your question. The authority of the General Assembly in this area is derived from Ga. Const. 1983, Art. III, Sec. IX, Par. VI. See O.C.G.A. § 15-21-91. The Constitution limits the grant of authority to impose and specially allocate additional penalties and fees to cases "in which a person is adjudged guilty." Ga. Const. 1983, Art. III, Sec. IX, Par. VI (g). Accordingly, O.C.G.A. § 15-21-93 (a) (2) must be read in light of, and in conformity with, the constitutional authorization. As the constitutional authorization is limited to situations "in which a person is adjudged guilty," O.C.G.A. § 15-21-93 (a) (2) must be limited in its application to bail or bond posted subsequent to a conviction, and can only be applied in those situations.

You have also asked whether, in light of the January 1, 1990, effective date of this Act, the fees required by the Act should be applied to all applications for bail or bond made on or after that date, or whether application of the statute should be limited to cases in which the crime is alleged to have been committed on or after January 1, 1990.

The State of Georgia cannot pass ex post facto legislation. U.S. Const., Art. I, Sec. X, Par. I; Ga. Const. 1983, Art. I, Sec. I, Par. X. A statute violates the ex post facto clause if it "increases punishment beyond what was prescribed when the crime was consummated." *Weaver v. Graham*, 450 U.S. 24, 30 (1981); see also, *Todd v. State*, 228 Ga. 746 (1972). The provisions applicable to bail and bonds are not characterized by the General Assembly as "penalties." O.C.G.A. § 15-21-93 (a) (2). This is in contrast to the provisions concerning fines. O.C.G.A. § 15-21-93 (a) (1). The additional assessments on bail or bond are not a part of the court's sentence, but are merely a surcharge. Since these surcharges are not punitive and not a part of the sentence, they may be applied on or after January 1, 1990, regardless of when the crime was committed.

Accordingly, it is my unofficial opinion that O.C.G.A. § 15-21-93 (a) (2) makes mandatory the imposition of the additional 10 percent fee on all bails or bonds posted for violation of the criminal laws of this state, the traffic laws of this state, or for violations of municipal ordinances by individuals adjudged guilty of these offenses. These additional fees may be assessed on or after January 1, 1990, regardless of the date upon which the offense was committed.

Prepared by:

NEAL B. CHILDERS
Assistant Attorney General

To: Speaker, H

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