



THURBERT E. BAKER  
ATTORNEY GENERAL

## Department of Law State of Georgia

40 CAPITOL SQUARE SW  
ATLANTA, GA 30334-1300

### OFFICIAL OPINION

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

Re: The amount required to be withheld and paid over to the Peace Officers' Annuity and Benefit Fund in criminal or quasi-criminal cases for violation of state statutes, county ordinances, or municipal ordinances is not required to be withheld and paid over in cases involving the failure to wear a seat safety belt in a motor vehicle under O.C.G.A. § 40-8-76.1(e).

Dear Mr. Williams:

This responds to your request for an official opinion regarding the application of the requirement for withholding and remittance to the Peace Officers' Annuity and Benefit Fund in cases involving violations of the provisions of O.C.G.A. § 40-8-76.1. O.C.G.A. § 40-8-76.1 generally provides for the imposition of a fine of \$15.00 for the failure to wear a seat safety belt in a motor vehicle. O.C.G.A. § 40-8-76.1(e) specifically provides in relevant part that:

(e)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, a person failing to comply with the requirements of subsection (b) of this Code section *shall not be guilty of any criminal act and shall not be guilty of violating any ordinance. A violation of this Code section shall not be a moving traffic violation* for purposes of Code Section 40-5-57.

(2) A person failing to comply with the requirements of subsection (b) of this Code section shall be guilty of the offense of failure to wear a seat safety belt and, upon conviction thereof, may be fined not more than \$15.00; but, the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, 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.*  
The court imposing such fine shall forward a record of the disposition of the case of failure to wear a seat safety belt to the Department of Motor Vehicle Safety.

O.C.G.A. § 40-8-76.1(e) (emphasis added).

Clearly, O.C.G.A. § 40-8-76.1(e)(2) specifically prohibits the imposition of any additional penalty, fee, or surcharge to the \$15.00 fine for the failure to wear a seat safety belt. *See* 2005 Op. Att’y Gen. 05-4 n. 2.<sup>1</sup> However, the issue that you have raised is whether amounts that would otherwise be withheld and paid over to the Peace Officers’ Annuity and Benefit Fund in accordance with O.C.G.A. § 47-17-60 should be withheld from fines imposed under O.C.G.A. § 40-8-76.1. O.C.G.A. § 47-17-60(a) provides relevantly that:

(a) A portion of each fine collected and each bond forfeited and collected in any criminal or quasi-criminal case for violation of state statutes, county ordinances, or municipal ordinances, which case is before any court or tribunal in this state, shall be paid to the secretary-treasurer according to the following schedule:

(1) Three dollars for any fine or bond forfeiture of more than \$4.00, but not more than \$25.00;

(2) Four dollars for any fine or bond forfeiture of more than \$25.00, but not more than \$50.00;

(3) Five dollars for any fine or bond forfeiture of more than \$50.00, but not more than \$100.00;

(4) Five percent of any fine or bond forfeiture of more than \$100.00.

---

<sup>1</sup> With regard to the additional penalties under O.C.G.A. § 15-21-73, the same conclusion applies to the \$50.00 fine imposed under O.C.G.A. § 40-8-76(b)(2) for the failure to provide for the proper restraint of children under six years of age. O.C.G.A. § 40-8-76(b)(2) provides relevantly that “[n]o court shall impose any additional fees or surcharges to a fine for . . . a violation [of O.C.G.A. § 40-8-76].” However, because O.C.G.A. § 40-8-76 does not include language indicating that a person violating its provisions “shall not be guilty of any criminal act and shall not be guilty of violating any ordinance” as is found in O.C.G.A. § 40-8-76.1(e), the amounts required to be withheld for the Peace Officers’ Annuity and Benefit Fund under O.C.G.A. § 47-17-60(a) are required to be withheld in cases involving violations of O.C.G.A. § 40-8-76.

(emphasis added). The amount that is paid to the Peace Officers' Annuity and Benefit Fund is "[a] portion of each fine collected and each bond forfeited and collected . . . ." *Id.*<sup>2</sup> Thus, the amount paid to the Peace Officers' Annuity and Benefit Fund is actually withheld from the fine or bond and not added to the fine or bond. O.C.G.A. § 40-8-76.1(e)(2) expressly prohibits "any additional penalty, fee, or surcharge" but does not prohibit withholding amounts from the fine imposed.

A prior opinion of this office has recognized that "contributions to the Peace Officers' Annuity and Benefit Fund are to be made in all criminal and quasi-criminal cases when a fine is collected or a bond is forfeited in a prescribed amount." 1972 Op. Att'y Gen. 72-29. Even if not a criminal violation, the willful failure to do an act required by statute or ordinance ordinarily involves conduct of a quasi-criminal nature. *Muller v. English*, 221 Ga. App. 672, 676 (1996). The violation of a local ordinance is a quasi-criminal matter. *DeKalb County v. Gerard*, 207 Ga. App. 43, 43 (1993). The language providing that violators "shall not be guilty of any criminal act and shall not be guilty of violating any ordinance" in O.C.G.A. § 40-8-76.1(e)(1) expressly precludes a finding that the violation is of a criminal nature. It also appears to preclude a finding that the violation is of a quasi-criminal nature since a violator "shall not be guilty of violating any ordinance." Thus, O.C.G.A. § 40-8-76.1(e)(1) precludes the collection of the amounts for the Peace Officers' Annuity and Benefit Fund since those amounts are triggered by "fine[s] collected and . . . bond[s] forfeited and collected in any criminal or quasi-criminal case for violation of state statutes, county ordinances, or municipal ordinances . . . ." O.C.G.A. § 47-17-60(a) (emphasis added). As there is no criminal or quasi-criminal violation in cases involving O.C.G.A. § 40-8-76.1(e), 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.<sup>3</sup>

Based on the foregoing, it is my official opinion that the amount required to be withheld and paid over to the Peace Officers' Annuity and Benefit Fund in criminal or quasi-criminal cases for violation of state statutes, county ordinances, or municipal ordinances is not required to be withheld and paid over in cases involving the failure to wear a seat safety belt in a motor vehicle under O.C.G.A. § 40-8-76.1(e).

---


<sup>2</sup> The withholding requirement for the Peace Officers' Annuity & Benefit Fund has been broadly construed to include all cases in which "costs are collected, whether as part of a fine, bond, or as a result of a settlement and nolle prosequi." 1963-65 Op. Att'y Gen. p. 609.

<sup>3</sup> In a somewhat similar manner, where no fine is imposed, the additional penalties under O.C.G.A. § 15-21-73 do not apply. *Rawls v. State*, 210 Ga. App. 408, 409 (1993); 2005 Op. Att'y Gen. U05-4.

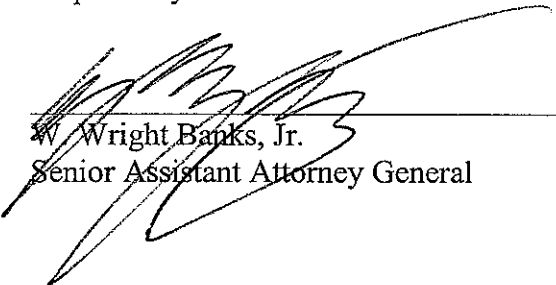
David R. Williams  
Page 4

Issued this 28<sup>th</sup> day of May, 2008.

Sincerely,

  
THURBERT E. BAKER  
Attorney General

Prepared by:

  
W. Wright Banks, Jr.  
Senior Assistant Attorney General

**OFFICIAL OPINION**