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Re: Georgia State Indemnification Fund Provisions in O.C.G.A.  
§§16-5-21(c)(2), 16-5-24(c)(2), and 16-10-24(d).

Dear Rachel:

This follows up your recent request for informal advice regarding the provisions of O.C.G.A. §§16-5-21(c)(2), 16-5-24(c)(2), and 16-10-24(d).

As you are aware, the General Assembly enacted S.B. 160, the "Back the Badge Act of 2017," on May 8, 2017. The Act amends provisions of Titles 15 and 16 of the Official Code of Georgia Annotated, including by imposing mandatory fines upon offenders convicted of certain crimes involving public safety officers. Portions of these fines are earmarked, after certain statutory deductions and surcharges, for the Georgia State Indemnification Fund for purposes of payment of indemnification for death or disability as provided for in Part 1 of Article 5 of Chapter 8 of Title 45. The relevant amendments will be found at O.C.G.A. §§16-5-21(c)(2), 16-5-24(c)(2), and 16-10-24(d) as of July 1, 2017.<sup>1</sup> This letter is to clarify the interpretation and effect of those provisions.

When reading a statute, "it is not presumed that the legislature intended that any part would be without meaning." Gilbert v. Richardson, 264 Ga. 744, 748 (1994). As such, when a statute "has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea." Fuciarelli v. McKinney, 333 Ga. App. 577, 583 (2015) (McFadden, J., concurring fully) (reversed on other grounds). Further, when a legislature includes particular language in one section of a statute but omits it from another, it is generally presumed that the legislature did so intentionally and purposely. See Barnhart v. Sigmon Coal Co., 534 U.S. 438, 452 (2002).

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<sup>1</sup> Informal advice will be provided separately regarding how S.B. 160 applies related to pending cases.

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O.C.G.A. §16-5-21(c)(2) contains the following language: “A person convicted *under this subsection* shall be punished, in addition to any term of imprisonment imposed, by a fine as provided by law which shall be at least \$ 2,000.00” (emphasis added). As such, subsection (c)(2) imposes a mandatory fine of at least \$2,000.00 only upon offenders convicted under O.C.G.A. §16-5-21(c).

O.C.G.A. §16-5-24(c)(2) contains the following language: “A person convicted *under this subsection* shall be punished, in addition to any term of imprisonment imposed, by a fine as provided by law which shall be at least \$ 2,000.00” (emphasis added). As such, subsection (c)(2) imposes a mandatory fine of at least \$2,000.00 only upon offenders convicted under O.C.G.A. §16-5-24(c).

O.C.G.A. §16-10-24(d) differs from the aforementioned provisions. This provision contains the following language: “A person convicted *under this Code section* shall be punished, in addition to any term of imprisonment imposed, by a fine as provided by law which shall be at least \$ 300.00” (emphasis added). The emphasized language indicates that this fine shall be imposed upon offenders convicted of any offense under O.C.G.A. §16-10-24, including subsections (a), (b) and (c).

In summary, when a statute uses a term in one place, and a different term in another, the different term denotes a different idea. O.C.G.A. §§16-5-21(c)(2) and 16-5-24(c)(2) each therefore impose minimum fines upon offenders convicted under O.C.G.A §§16-5-21(c) and 16-5-24(c), respectively, while O.C.G.A. §16-10-24(d) imposes a minimum fine upon offenders convicted under the entirety of O.C.G.A. §16-10-24.

I hope that this informal advice is helpful. If you would like to discuss, please contact me. Please keep in mind that this letter is informal advice and is not an official or unofficial opinion of the Attorney General.

Sincerely,



W. WRIGHT BANKS, JR.  
Deputy Attorney General

Drafted by:  
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WWB

cc: John Earle, Director, Georgia Superior Court Clerks' Cooperative Authority  
Rebecca Sullivan, General Counsel, Georgia Department of Administrative Services