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OFFICIAL OPINION

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

RE: Local governing authorities are not authorized to enact local ordinances that differ from O.C.G.A. § 15-6-95 which establishes an order of priority for the distribution of partial payments toward criminal fines, forfeitures, or costs that are received by clerks of superior court.

Dear Mr. Williams:

This responds to your request for an Official Opinion of the Attorney General regarding whether local governing authorities are permitted to enact local ordinances that vary from the provisions of O.C.G.A. § 15-6-95. Specifically, you have asked whether a county ordinance may properly provide for a priority schedule for the distribution of partial payments toward criminal fines and fees that differs from the requirements of O.C.G.A. § 15-6-95.

O.C.G.A. § 15-6-95 establishes an order of priority for the distribution of criminal fines, forfeitures, or costs by clerks of superior court receiving partial payments of such fines, forfeitures, or costs. As amended during the 2004 Session of the General Assembly, O.C.G.A. § 15-6-95 provides:

Notwithstanding any law to the contrary, a clerk of any superior court of this state who receives partial payments, as ordered by the court, of criminal fines, forfeitures, or costs shall distribute said sums in the order of priority set forth below:

- (1) The amount provided for in Chapter 17 of Title 47 for the Peace Officers' Annuity and Benefit Fund;
- (2) The amount provided for in Chapter 14 of Title 47 for the Superior Court Clerks' Retirement Fund of Georgia;
- (3) The amount provided for in Chapter 16 of Title 47 for the Sheriffs' Retirement Fund of Georgia;

- (4) The amounts provided under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73;
- (5) The amounts provided for under subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73;
- (6) The amount as may be provided in Chapter 15 of Title 36 for county law libraries;
- (7) The surcharge provided for in Chapter 21 of this title for jail construction and staffing;
- (8) The surcharge provided for in cases of driving under the influence for purposes of state crime victim compensation under Code Section 15-21-112;
- (9) The balance of the fine shall be paid to the county;
- (10) After the final partial or installment payment, the surcharge provided for in Code Sections 15-21-100 and 15-21-101 for the Drug Abuse Treatment and Education Fund.¹

O.C.G.A. § 15-6-95 “obligates the clerk to pay, in the order established by the General Assembly, ‘*the amount*,’ ‘*the surcharge*,’ or ‘*the balance*’ owed to the highest priority recipient before a distribution is made to the next priority recipient.” 2003 Op. Att’y Gen. 03-4, at 3. “[T]he amount owing to a higher priority recipient must be paid in its entirety before distribution is made to a lower priority recipient.” *Id.* at 2.

In your request, you indicate that

the Georgia Superior Court Clerks’ Cooperative Authority has become aware of at least one county government that has enacted an ordinance to provide for a priority schedule for the distribution of partial payments toward fines and fees that differs from the requirements of O.C.G.A. § 15-6-95. One of the notable differences is that the county ordinance provides that partial payments are to be first distributed to the county’s portion of the fine while O.C.G.A. § 15-6-95 provides that distributions to the county are ninth in the order of priority.

¹ The General Assembly originally enacted O.C.G.A. § 15-6-95 in 1993. 1993 Ga. Laws 374, § 1.

In addressing the issue that you have raised, it is worthwhile to consider the relationship between counties and the State generally. A county is a civil division of the State ““created by the sovereign power of the State of its own will, without the particular solicitation, consent, or concurrent action of the people who inhabit it; a local organization, which, for the purpose of civil administration, is invested with certain functions of corporate existence.”” *Hammond v. Clark*, 136 Ga. 313, 329 (1911) (citation omitted). Counties “are subdivisions of the State Government - mere modes by which the State parcels out its duties of governing the people.” *Scales v. Ordinary*, 41 Ga. 225, 227 (1870). In *Hines v. Etheridge*, 173 Ga. 870 (1931), the Georgia Supreme Court stated as follows regarding counties:

Counties are subdivisions of the State government to which the State parcels its duty of governing the people. They are local, legal, political subdivisions of the State, created out of its territory, and are arms of the State, created, organized, and existing for civil and political purposes, particularly for the purpose of administering locally the general powers and policies of the State.

Id. at 875 (citations omitted).

The Georgia Constitution provides:

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

Ga. Const. Art. III, § VI, ¶ IV(a). The Georgia Supreme Court has described this provision as follows:

The clause’s first provision follows the preemption rule of previous constitutions by precluding local or special laws when general laws exist on the same subject. Under this provision, preemption may be express or implied. The clause’s second provision provides for an exception to the general rule of preemption when general law authorizes the local government to act and the local ordinance does not conflict with general law. We have concluded that there was no conflict when the local law did not impair the general law’s operation but rather augmented and strengthened it.

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Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 275 (1998) (footnote omitted). “The constitutional provision precludes local or special laws when general laws exist on the same subject, and provides for an exception to the general rule of preemption when a local law is the result of the local government’s exercise of its police powers, pursuant to authority granted by general law.” *Old South Duck Tours, Inc. v. Mayor & Alderman of the City of Savannah*, 272 Ga. 869, 871 (2000) (citing *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272 (1998)). Analysis of the issue that you have raised ends with the above-quoted language of Ga. Const. Art. III, § VI, ¶ IV(a). In enacting O.C.G.A. § 15-6-95, the General Assembly has provided for an order of priority for the distribution of partial payments toward criminal fines, forfeitures, or costs. As the General Assembly has done so, Ga. Const. Art. III, § VI, ¶ IV(a) precludes local governments from enacting ordinances that differ from the order of priority established by O.C.G.A. § 15-6-95.

Other provisions of the Constitution are consistent with the conclusion that local governments are not permitted to enact ordinances that differ from O.C.G.A. § 15-6-95. The Constitution preempts county governing authorities from taking action affecting eight matters specifically enumerated in Ga. Const. Art. IX, § II, ¶ I(c) and “other matters which the General Assembly by general law has ‘preempted.’” *Franklin County*, 270 Ga. at 275 n. 16. Two of the specific preemption provisions in Ga. Const. Art. IX, § II, ¶ I(c) are relevant to the issue presented. The Constitution prohibits local governments from taking “[a]ction affecting any elective county office, the salaries thereof, or the personnel thereof, except the personnel subject to the jurisdiction of the county governing authority.” Ga. Const. Art. IX, § II, ¶ I(c)(1). The Georgia Supreme Court has concluded that Ga. Const. Art. IX, § II, ¶ I(c)(1) prohibits a county from adopting work regulations for employees of a tax commissioner, an elected county officer. *Mobley v. Polk County*, 242 Ga. 798, 801-02 (1979). Clerks of superior court are elected county officers pursuant to Ga. Const. Art. IX, § I, ¶ III. The Constitution also expressly provides that the legislative powers of counties shall not be construed to extend to “[a]ction affecting any court or the personnel thereof.” Ga. Const. Art. IX, § II, ¶ I(c)(7). The Georgia Supreme Court has interpreted this constitutional provision to prohibit a county merit board from taking action affecting the clerk of superior court and his employees unless the clerk requests that his or her employees be subject to a county merit system and the county provides for such inclusion. *Gwinnett County v. Yates*, 265 Ga. 504, 507-08 (1995). The Georgia Court of Appeals has indicated that the same provision “prohibits a county from exercising the legislative powers granted to it so as to affect any court or the personnel thereof.” *Price v. Fulton County Comm’n*, 170 Ga. App. 736, 737 (1984).


Therefore, it is my official opinion that local governing authorities are not authorized to enact local ordinances that differ from O.C.G.A. § 15-6-95 which establishes an order of priority for the distribution of partial payments toward criminal fines, forfeitures, or costs that are received by clerks of superior court.

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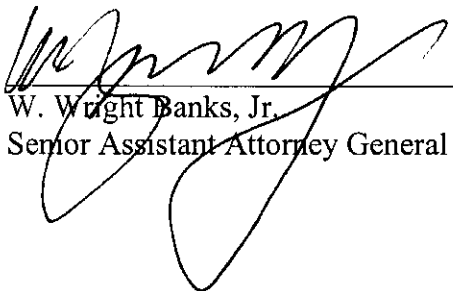
Mr. David R. Williams
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Sincerely,


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