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Re: House Bill 1EX; Imposition of Additional Penalties

Dear John:

This follows up our prior conversations regarding the provisions of O.C.G.A. § 15-21-131 which impose an additional penalty of five percent in criminal cases. O.C.G.A. § 15-21-131 provides as follows:

- (a) In every case in which any court of this state or any municipality or political subdivision of this state shall impose a fine, which shall be construed to include costs, for any criminal offense or any criminal ordinance violation, there shall be imposed as an additional penalty a sum equal to 5 percent of the original fine.
- (b) Such sums shall be in addition to any amount required by Code Section 47-17-60 to be paid into the Peace Officers' Annuity and Benefit Fund and in addition to any other amounts provided for in this chapter.

In our conversations, you have asked whether the additional penalty should be collected in traffic cases in which the accused posts a cash bond that is subsequently forfeited in lieu of the accused appearing in court. As you have pointed out, there is no express reference to bonds in O.C.G.A. § 15-21-131, but several other Code sections involving additional penalties make specific reference to the collection of additional amounts when bonds are posted. See O.C.G.A. §§ 15-21-73, 15-21-93, & 15-21-179. When 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

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forfeited. O.C.G.A. § 15-21-73(a)(2). O.C.G.A. § 15-21-93(a)(2) also provides that the additional amounts collected for jail construction and staffing also are not to be paid to the county government unless the bond is forfeited.¹ O.C.G.A. § 15-21-179 merely makes reference to collecting the additional penalty imposed “[i]n every case in which any court in this state shall impose a fine or bond payment” (emphasis added).² In light of the lack of an express reference to the addition of the additional penalty imposed by O.C.G.A. § 15-21-131 to bonds and the specific references to bonds in O.C.G.A. §§ 15-21-73, 15-21-93, & 15-21-179, it appears fairly clear that the additional penalty imposed by O.C.G.A. § 15-21-131 is not to be collected in all types of criminal cases in which bonds are posted.

As an initial matter, it is clear that the additional penalty imposed under O.C.G.A. § 15-21-131 applies to traffic offenses. 1997 Op. Att’y Gen. U97-28. As we have discussed, many traffic cases are disposed of by the accused party posting a cash bond prior to the court date and forfeiting that bond in lieu of appearing in court. Unlike other situations involving the forfeiture of bonds, when a cash bond is forfeited in lieu of appearing in a traffic case, the cash bond is forfeited “and the proceeds shall be applied in the same manner as fines.” O.C.G.A. § 17-6-8 (emphasis added). O.C.G.A. § 40-13-58, which addresses the disposition of traffic violations by traffic violations bureaus provides that where a cash bond is forfeited “[t]he proceeds of the cash bond shall be applied and distributed as any fine imposed by said court would be.” (emphasis added).³ O.C.G.A. §§ 17-6-8 and 40-13-58 make clear that the forfeitures of cash bonds involving traffic violations do not involve the regular statutory procedure for forfeiting bail bonds.

There are a number of authorities discussing the imposition of the additional penalty under O.C.G.A. § 15-21-73. These are relevant in light of the similarity between the additional penalty under O.C.G.A. § 15-21-73 and that under O.C.G.A. § 15-21-131. 2005 Op. Att’y Gen. U05-4 determines that because no fine is imposed in cases involving the civil monetary penalty authorized by O.C.G.A. § 40-6-20(f)(3)(A), the additional

¹ It is important to keep in mind that with regard to bonds, the additional penalties in O.C.G.A. §§ 15-21-73 & 15-21-93 operate differently as the result of differing language in the Constitution. See 1990 Op. Att’y Gen. U90-4 and 1981 Op. Att’y Gen. U81-43.

² The additional penalty in O.C.G.A. § 15-21-179 applies to all traffic violations unless specifically excepted. 2005 Op. Att’y Gen. 05-4.

³ “Cash bonds are common in criminal offenses arising under the traffic laws. In such cases, cash bonds may be forfeited by the court and the proceeds thereof ‘shall be applied and distributed as any fine would be.’” 1972 Op. Att’y Gen. 72-20 (quoting language of former Ga. Code Ann. § 27-511 now appearing in O.C.G.A. § 17-6-8.)

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penalty under O.C.G.A. § 15-21-73 does not apply. Similarly, 1980 Op. Att'y Gen. 80-83 indicates that "if a sentence imposed neither costs nor a traditional fine, no penalty could be imposed under § 15-21-73." 1996 Op. Att'y Gen. U96-8 concludes that "[i]t is clear that this sum is an additional penalty which is to be added to the fine." 2003 Op. Att'y Gen. 03-4 concludes that "[w]hen a sentencing judge imposes a fine for the violation of a criminal or traffic law, the General Assembly has mandated that 'there shall be imposed as an additional penalty a sum equal to the lesser of \$50.00 or 10 percent of the original fine.'" In Rawls v. State, the Georgia Court of Appeals recognized that "the imposition of a penalty pursuant to O.C.G.A. § 15-21-73 can only attach to properly imposed fines." 210 Ga. App. 408, 409 (1993). Therefore, where no fine is imposed for a violation, the penalty pursuant to O.C.G.A. § 15-21-73 cannot be imposed. Id.

One could argue that in cases in which the bond is forfeited, no fine is actually paid and, therefore, the penalty under O.C.G.A. § 15-21-131 cannot be applied. However, the funds collected in traffic cases from forfeited cash bonds are expressly required to be "applied and distributed as any fine imposed by said court would be" or "applied in the same manner as fines." Thus, it seems that in order to apply and distribute the funds collected as the court would a fine, adequate funds have to be collected at the time of the posting of the bond to ensure payment of the fine amount along with the various additional penalties that are triggered by the imposition of the fine. Thus, it appears reasonable to conclude that in traffic cases in which a cash bond is forfeited in lieu of an appearance, the amount of cash bond imposed should take into account the additional penalty imposed by O.C.G.A. § 15-21-131 so that the additional penalty can be paid from the cash bond forfeited when it is "applied and distributed as any fine imposed by said court would be" or "applied in the same manner as fines" as contemplated by O.C.G.A. §§ 17-6-8 and 40-13-58.⁴

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

⁴ In a somewhat similar context involving the amounts withheld for the Peace Officers' Annuity and Benefit Fund from "each fine collected and each bond forfeited" which is required "to include costs" a prior Opinion of this Office concludes that the withholding requirement applies "whenever 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. O.C.G.A. §§ 17-6-8 and 40-13-58 both contemplate cash bonds being forfeited and cases being thereby "disposed of and settled."

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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/jgb
cc: David R. Williams, Executive Director