

**CONFIDENTIAL LEGAL MEMORANDUM
ATTORNEY-CLIENT PRIVILEGE**

TO: Steven W. Lake
Office of Audit Services

FROM: Eugene H. Matthews
General Counsel and Deputy Director for Policy

RE: S.C. Code § 56-3-910 and Proviso 36.7

DATE: February 28, 2001

ISSUE

How should the Department of Public Safety (DPS) interpret the provisions of S.C. Code § 56-3-910 and Proviso 36.7 of the Appropriations Act of FY2000-2001?

SHORT ANSWER

Fees and penalties collected by DPS under § 56-3-910 – or any other statute in Title 56 – and credited to other entities are not subject to Proviso 36.7 because they are never “credited to DPS.”

DISCUSSION

S.C. Code § 56-3-910 states that:

- (A) All fees and penalties collected by the department [DPS] under the provisions of this chapter must be distributed as provided in subsection (B) of this section except for fees and penalties collected pursuant to Sections 56-3-660 and 56-3-670 which must be placed in the state highway account of the South Carolina Transportation Infrastructure Bank and except for those fees and penalties which must be credited to a different account as otherwise provided for by law.

- (B) Twenty percent of the fees and penalties collected pursuant to this chapter, except for those provided for separately in subsection (A) of this section, must be credited to the State Highway Fund of the Department of Transportation and eighty percent to the general fund of the state, beginning in fiscal year 2000-2001.

By its own terms, this section applies only to funds collected by DPS under Chapter 3 (“Motor Vehicle Registration and Licensing”) of Title 56. Thus, S.C. Code § 56-3-910 requires DPS to disburse funds collected under Chapter 3 in the following manner:

- Fees and penalties collected pursuant to Sections 56-3-660 and 56-3-670 must be credited to (or “placed in”) the state highway account of the South Carolina Transportation Infrastructure Bank.
- Fees and penalties collected pursuant to statutes in Chapter 3 which are credited to entities other than DPS as “provided for by law” must be so credited.
- All other funds collected under Chapter 3 must be credited to either the State Highway Fund of DOT (20%) or the general fund (80%).

Proviso 36.7 states as follows:

Notwithstanding any provision of Title 56 of the 1976 Code relating to the disposition of revenues, all revenues derived under Title 56 credited to the Department of Public Safety must be credited to the General Fund of the state, except those fees collected to recover the costs of the production, purchase, handling and mailing of documents, publications, records and data sets, those fees collected under Sections 29-5-2951 and 56-1-286 for supplying and maintaining video cameras in law enforcement vehicles used for traffic enforcement and the issuance of the alcohol restricted license and such funds will be retained by the agency.

The proviso applies to all chapters in Title 56, including but not limited to Chapter 3. However, it applies only to revenues “credited to the Department of Public Safety.” By its own terms, the proviso does not apply to revenue that is:

- Collected under Chapter 3 of Title 56 and credited to the state highway account of the South Carolina Transportation Infrastructure Bank.
- Collected under Chapter 3 of Title 56 and credited to the State Highway Fund of DOT (20%) or the general fund (80%).
- Collected under any chapter of Title 56 and credited to an entity other than DPS.
- Collected under any chapter of Title 56 that recovers the costs of the production, purchase, handling and mailing of documents, publications, records and data sets.

- Collected under §§ 56-5-2951 and 56-1-286 for supplying and maintaining video cameras in law enforcement vehicles used for traffic enforcement.
- Collected pursuant to the issuance of the alcohol restricted license.

Revenue collected under any chapter of Title 56 that does not fall into one of these six categories must be credited to the general fund of the state.