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Honorable Randall I. Hillman
Executive Director
Office of Prosecution Services
515 South Perry Street
Montgomery, Alabama 36104

Restitution Recovery Fund – Fees – District Attorney's Fund - Funds

Based upon longstanding practice, section 12-17-225.4 of the Code of Alabama authorizes the district attorney's restitution recovery division to collect the entire 30 percent collection fee from any sums collected.

Dear Mr. Hillman:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Please reconsider the opinion issued to the Honorable Callie T. Dietz, Administrative Director of Courts, dated May 12, 2010, A.G. No. 2010-066, giving consideration to the fact that, for the past 15 years, the 30 percent collection fee received by the district attorneys' restitution recovery divisions has come "off the top" of any funds collected.

FACTS AND ANALYSIS

On May 12, 2010, this Office issued an opinion to Honorable Callie T. Dietz opining for the first time with respect to section 12-17-225.4 of the Code of Alabama, enacted in 1995. The opinion responded to Ms. Dietz's questions regarding the proper disposition of payments referred to the district attorneys

for collection and the division of collection fees when only a partial payment is received.

In *Dietz*, this Office determined that section 12-17-225.4 of the Code of Alabama does not authorize the distribution of the whole 30 percent collection fee to the district attorney's restitution recovery division unless the whole of the unpaid sums are collected. If a partial collection is made, a partial collection fee is earned and may be distributed only in proportion to the sums actually collected (on a pro rata basis). Opinion to Honorable Callie T. Dietz, Administrative Director of Courts, Administrative Office of Courts, dated May 12, 2010, A.G No. 2010-066.

Your request states that since the Legislature passed the Restitution Recovery Act (sections 12-17-225 through 12-17-225.9) in 1995, the restitution recovery division established by each district attorney has collected the 30 percent collection fee "off the top" of any funds collected. You further state that this allows the district attorneys to provide the necessary funding to establish and continue the operations of the recovery divisions. The Department of Examiners of Public Accounts ("Examiners"), by letter, confirmed that the Examiners' interpretation for the past 15 years of audits was also that the 30 percent collection fee was to be taken "off the top" of any funds collected.

Section 12-17-225.4 of the Code of Alabama provides that, upon referral for collection of an unpaid restitution award, cost, fine, fee, or other monetary assessment or award to the restitution recovery division of a district attorney's office, the court "shall assess a collection fee of 30 percent of the funds due which shall be added to the amount of funds due." ALA. CODE §12-17-225.4 (2006). The section further provides that, upon collection of any such unpaid sums, the district attorney shall distribute "[s]eventy-five percent of the collection fee" to the district attorney's fund and "[t]wenty-five percent of the collection fee" to the circuit clerk's fund. *Id.* Only after the collection fee has been paid are any remaining funds disbursed.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). The plain language of the statute authorizes the 30 percent "collection fee" and the distribution of the entire "collection fee" prior to any other disbursements. There is no textual support in the statute for a partial collection fee and pro rata distribution of the collection fee based upon the sums collected.

Furthermore, *Dietz* did not take into account the 15-year administrative practice by the district attorneys and the circuit clerks, approved by the Examiners of Public Accounts and acquiesced in by the courts, the Legislature, and the Administrative Office of Courts. Although administrative construction of a statute is not binding, such construction is persuasive and is to be considered favorably. *McCullar v. Universal Underwriters Life Ins. Co.*, 687 So. 2d 156, 163 (Ala. 1996). This is particularly true when the Legislature has not acted to amend the law and change the practice.

Based upon the plain language of the statute and further supported by longstanding administrative practice, it is the opinion of this Office that section 12-17-225.4 of the Code allows the district attorneys' restitution recovery divisions to collect the entire 30 percent fee from any sums collected. The previous opinion to *Dietz*, A. G. No. 2010-066, is hereby overruled and withdrawn.

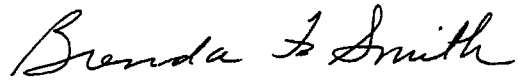
CONCLUSION

Based upon the plain language of the statute, and further supported by longstanding administrative practice, section 12-17-225.4 of the Code of Alabama authorizes the district attorney's restitution recovery division to collect the entire 30 percent collection fee from any sums collected.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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