



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

July 22, 2011

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Rex A. Davis
Clerk of the Circuit Court
2500 Washington Avenue
Newport News, Virginia 23607-4307

Dear Mr. Davis:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether § 15.2-1613.1 allows a processing fee to be assessed only for defendants who are processed or re-processed into a jail following conviction, for service of an active sentence, or whether the fee applies to any defendant who underwent jail processing prior to conviction.

Response

It is my opinion that § 15.2-1613.1 authorizes the fee to be assessed only when a person is admitted, or re-admitted, to jail *after* conviction. If a person is convicted, but is not admitted or readmitted to jail following conviction, the fee may not be assessed.

Applicable Law and Discussion

The General Assembly has authorized localities to enact an ordinance imposing a processing fee not to exceed \$25 on any individual admitted to a county, city, or regional jail following conviction. The fee shall be ordered as a part of court costs collected by the clerk, deposited into the account of the treasurer of the county or city and shall be used by the local sheriff's office to defray the costs of processing arrested persons into local or regional jails. If processing costs are incurred by a regional jail rather than a local sheriff's office, the fees collected pursuant to such ordinance may be used by the regional jail to defray the costs of processing arrested persons. Where costs are incurred by a sheriff's office and a regional jail the fees collected pursuant to such ordinance may be divided proportionately as determined by the local governing body or bodies, between the sheriff's office and the regional jail. Where costs are incurred by a police department for booking or fingerprinting services, the fees collected pursuant to

such ordinance may be divided proportionately as determined by the local governing body or bodies, between the sheriff's office and the police department.^[1]

"In deciding the meaning of the statute, we must consider the plain language that the General Assembly employed when enacting this statute."² Here, the first sentence is the key. It provides that a locality may enact an ordinance authorizing recovery of a fee for "any individual admitted to a county, city or regional jail following conviction." To assess the fee, it is not sufficient that the individual was admitted to the jail *before* conviction. Rather, the individual must be "admitted to jail . . . following conviction." In situations where an individual spent some time in jail pretrial, but is not sent back to the jail "following conviction," either because his sentence did not involve any jail time, he received a suspended sentence, or he was sentenced to time served, the individual is not "admitted to the . . . jail following conviction" and no fee can be assessed.

Conclusion

Accordingly, it is my opinion that § 15.2-1613.1 authorizes the fee to be assessed only when a person is admitted, or re-admitted, to jail after conviction. If a person is convicted, but is not admitted or readmitted to jail following conviction, the fee may not be assessed.

With kindest regards, I am

Very Truly Yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

¹ VA. CODE ANN. § 15.2-1613.1 (Supp. 2011).

² Haislip v. So. Heritage Ins. Co., 254 Va. 265, 268, 492 S.E.2d 135, 137 (1997).