



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Eugene C. Wingfield
Clerk of Court, Lynchburg Circuit Court
900 Court Street
Post Office Box 4
Lynchburg, Virginia 24505

Dear Mr. Wingfield:

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 the clerk of a circuit court can assess a returned check fee in civil cases.

Response

It is my opinion that the clerk cannot collect a returned check fee in a civil case.

Applicable Law and Discussion

Three sections of the *Code of Virginia* are applicable to your inquiry. First, § 2.2-614.1 provides, in pertinent part:

A. Subject to § 19.2-353.3, any public body^[1] that is responsible for revenue collection, including, but not limited to, taxes, interest, penalties, fees, fines or other charges, may accept payment of any amount due by any commercially acceptable means, including, but not limited to, checks, credit cards, debit cards, and electronic funds transfers.

* * *

C. If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, . . . and the check or

¹ This Office has opined that “[t]he clerk of the circuit court is a ‘public body’ subject to The Virginia Freedom of Information Act,” based on § 2.2-3701, which establishes that “constitutional officers shall be considered public bodies.” 2004 Op. Va. Att’y Gen. 88, 89. Further, in determining whether the Virginia State Bar was a public body under § 2.2-614.1, this Office, in the absence of a definition in that provision, looked to § 2.2-3701; for “it is well-settled that ‘[t]he Code of Virginia constitutes a single body of law, and other sections can be looked to where the same phraseology is employed.’” 2008 Op. Va. Att’y Gen. 6, 7 (quoting *King v. Commonwealth*, 2 Va. App. 708, 710, 347 S.E.2d 530, 531 (1986)).

other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of \$35 or the amount of any costs, whichever is greater, shall be added to such amount. This penalty shall be in addition to any other penalty provided by law, except the penalty imposed by § 58.1-12 shall not apply.

Second, § 17.1-275 sets forth which fees shall be collected by circuit court clerks. It provides, in relevant part:

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

* * *

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit card issuer that payment will not be made for any reason, the clerk shall collect, if allowed by the court, a fee of \$20 or 10 percent of the amount to be paid, whichever is greater, *in accordance with § 19.2-353.3*.

(Emphasis added). This statute contains no other reference to fees for returned checks.

Lastly, § 19.2-353.3, which both § 2.2-614.1 and § 17.1-275 reference, provides that:

[P]ersonal checks and credit cards shall be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a district court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. . . . [P]ersonal checks shall be accepted in lieu of money *to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a circuit court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town.* . . .

If a check is returned unpaid by the financial institution on which it is drawn or notice is received from the credit card issuer that payment will not be made, for any reason, the fees, fine, restitution, forfeiture, penalty or costs shall be treated as unpaid, and the court may pursue all available remedies to obtain payment. The clerk of the court to whom the dishonored check or credit card was tendered may impose a fee of twenty dollars or ten percent of the value of the payment, whichever is greater, in addition to the fine and costs already imposed.

(Emphasis added). There is no equivalent provision in Titles 8.01, 16.1 or 17.1, which govern, generally, civil procedure, courts not of record and circuit courts, respectively.

Statutes are to be construed according to their plain language,² and those dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.³ The phrases “subject to § 19.2-353.3” and “in accordance with § 19.2-353.3” as found in §§ 2.2-614.1 and 17.1-275, respectively, evince an intent by the General Assembly that the collection of fees for returned checks by clerks of circuit court is to be governed by § 19.2-353.3, rather

² Signal Corp. v. Keane Fed. Sys., 265 Va. 38, 46-47, 574 S.E.2d 253, 257 (2003).

³ See, e.g., 2009 Op. Va. Att’y Gen. 115, 118 (citing 2B NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46:5 (West 7th ed. 2008)).

than by the more generally applicable fee provisions. Moreover, in instances where it is not clear which of a number of statutes is applicable, or when statutes provide different procedures on the same subject matter, the more specific prevails over the more general.⁴ By its terms, § 19.2-353.3 is limited to the collection of fees by the clerk for “offenses . . . committed against the Commonwealth or against any county, city or town” I therefore conclude that there is no authority for a clerk of a circuit court to collect a returned check fee in a civil case.

Conclusion

Accordingly, it is my opinion that in a civil case, after a check received in the course of the clerk’s duties is returned, the clerk of a circuit court cannot assess a fee related to the returned check.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C. II". The signature is stylized, with the first name "Ken" and the last name "C." followed by a Roman numeral "II".

Kenneth T. Cuccinelli, II
Attorney General

⁴See, e.g., 2009 Op. Va. Att’y. Gen. 12, 15 and citations therein.