
Coates' Canons Blog: Richmond County Board of Education v. Cowell: Clear Proceeds of Improper Equipment Offense Surcharge Belongs to Public Schools

By Kara Millonzi

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As part of the Justice Reinvestment Act of 2011, the legislature enacted **G.S. 7A-304(a)(4b)**, which assesses a \$50.00 surcharge on any individual convicted of an improper equipment offense. Improper equipment offenses are generally defined in G.S. Ch. 20, Art. 3, Part 9, and include operating a vehicle without properly functioning equipment (such as a steering mechanism, speedometer, brakes, horn, directional signal, windows, windshield wipers, exhaust system, emission control device, tires, etc.). The surcharge is assessed in addition to any other penalty or cost authorized by law for conviction of the offense. The proceeds are remitted to a state fund (State Confinement Fund) and used to pay a portion of the cost of housing certain misdemeanants in county jails.

The North Carolina Court of Appeals recently held that the use of the proceeds for this purpose violates the North Carolina Constitution. The court determined that the \$50.00 surcharge “falls within the ambit of Article IX, Section 7(a)” of the Constitution and, therefore, the clear proceeds generated from the surcharge must be used to fund education rather than be contributed to the State Confinement Fund.

Article IX, Section 7(a)

Article IX, Section (7a) of the North Carolina Constitution states:

[T]he clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

The North Carolina Supreme Court has interpreted the provisions of section 7(a) as identifying two distinct categories of monies that must be disbursed to the public schools:

- (1) the clear proceeds of all penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the state; and
- (2) the clear proceeds of all fines collected for any breach of the criminal laws.

Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364 (1988). For purposes of the first category, a “penalty” is a sum collected under a “penal law[]” or a “law[] that impose[s] a monetary payment for [its] violation [where] the payment is punitive rather than remedial in nature and is intended to penalize the wrongdoer rather than compensate a particular party.” *Id.*

Richmond County Board of Education v. Cowell

In *Richmond County Board of Education v. Cowell*, the question for the court was whether or not the \$50.00 surcharge falls within the first category—a charge imposed for violating state law that is intended to punish the violator. The trial court answered this question in the affirmative and, on *de novo* review, the court of appeals agreed. (Note that the surcharge does not fall within the second category because the improper equipment offenses do not constitute breaches of the state's criminal laws. The offenses are infractions—noncriminal violations of law that are not punishable by imprisonment.)

The court looked at a number of factors in arriving at this conclusion. The court first considered the label assigned to the surcharge by the General Assembly. The label and stated purpose of a charge provide at least some indication of legislative intent. According to the North Carolina Supreme Court, “[t]he words used to describe the payment are[] to be considered in deciding whether the payment made on account of a violation comes within the purview of Article IX, Section 7.” *North Carolina School Boards Association v. Moore*, 359 N.C. 474 (2005). For example, denoting an assessment as a “penalty” (as opposed to a “fee,” “charge” or “interest payment”) is some indication that the legislature intended to punish a violator. With respect to the \$50.00 surcharge at issue in this case, the statute does not label it a “penalty.” Instead, it refers to the charge as a “cost” and specifies that it is to “provide for contractual services to reduce county jail populations.” This, according to the court, provides some evidence that the legislature did not ascribe a punitive purpose to the surcharge.

The label assigned to a particular charge is not determinative, though. See *Cauble v. City of Asheville*, 301 N.C. 340 (1980). A second factor a court must consider is whether the charge is imposed in addition to other fees and charges, such as interest charges. In that case, arguably the fees, charges, or interest payments are intended to compensate whereas the penalty is intended to punish. In this case, the \$50.00 surcharge is imposed in addition to “any other applicable penalty or cost.” This also suggests that the legislature did not intend the surcharge to be punitive.

As a third factor, the situations in which the penalty is imposed may give insight into legislative intent. If, for example, the penalty is not imposed in situations in which the violation was “innocent,” or not due to any fault of the violator, it suggests that the penalty is intended as a punishment. In this case, the \$50.00 surcharge is imposed “only on those individuals who have been found responsible for an improper equipment offense.” In this sense, it functions as a form of punishment of the violator.

A fourth factor is the use of the proceeds generated by the charge. According to the supreme court, “[t]he critical issue is whether the penalty mandated for violation of the statute is imposed as punishment to deter noncompliance or to measure the damages accruing to an individual or class of individuals resulting from the breach.” *North Carolina School Boards Association v. Moore*, 359 N.C. 474 (2005). However, the court has recognized restitution “only when damages were specifically quantified.” *Id.* In this case, the proceeds generated by the \$50.00 surcharge are not used to compensate the state for lost revenue due to the improper equipment offense, or to reimburse the state for expenses incurred in enforcing these laws. Instead, the proceeds are directed to the State Confinement Fund and used to offset the costs of housing prisoners. As the court noted, imprisonment is not even a possible punishment for the commission of an improper equipment offense.

Focusing particularly on the final factor, the court held that the \$50.00 surcharge serves no remedial purpose and, instead, punishes the violator for committing the offense. Because of that, the surcharge falls within the first category of charges that must be distributed to the public schools under Article IX, Section 7(a).

Applicability of Richmond County Board of Education v. Cowell to Other School Units

The holding of the case means that as of September 1, 2015, the clear proceeds of any monies collected pursuant to the current improper equipment offense charge under **G.S. 7A-304(a)(4b)** must be distributed to the local school administrative unit(s) of the county in which the proceeds were collected. However, Section 18A.11 of the state budget bill, **H97**, amends **G.S. 7A-304(a)(4b)** to redirect the proceeds from the surcharge to the State Treasurer, to be used to support the General Court of Justice. If the budget bill is enacted (which appears likely as of this writing), it will render the decision in *Richmond County Board of Education v. Cowell* moot with respect to the surcharge proceeds collected on or after the effective date of that section of the budget. Although it is possible a court would still interpret the amended statutory provision as imposing a penalty for purposes of **Article IX, Section 7(a)**, that outcome is not certain. The court of appeals relied heavily on the fact that the proceeds from the surcharge were used for a purpose completely unrelated to

the offenses for which the charge was imposed to determine that the surcharge was punitive. It is at least possible that a court would come to a different conclusion when the proceeds are used to support the General Court of Justice.

What about monies that were previously collected and disbursed to the State Confinement Fund (before the effective date of the amendment to G.S. 7A-304(a)(4b) in the budget bill)? The court directed the state to pay back all of the proceeds received into the State Confinement Fund from the \$50 surcharge revenue previously collected (as of September 1) in Richmond County. The monies will be paid to the clerk of superior court, who will then distribute the clear proceeds to the Richmond County School Board in accordance with **G.S. 115C-452**.

Because no other local school administrative unit was a party to the case, the remedy does not apply to school districts in any other counties. Either the state will have to voluntarily relinquish to the clerk of court in each county that county's share of the monies previously collected pursuant to **G.S. 7A-304(a)(4b)**, or each school unit will have to sue the State Treasurer for its share of the revenue that had previously been allocated to the State Confinement Fund from the surcharge.

Prospective Guidance to Local Government Officials

Although *Richmond County Board of Education v. Cowell* did not involve a charge collected by a local government, it does provide some prospective guidance to local government officials dealing with similar types of charges. As detailed in a previous **post**, there are four categories of locally-collected revenues that must be distributed to the public schools. One of the categories involves the type of charge at issue in the *Richmond County Board of Education* case—a charge imposed under state law that is intended to punish the violator.

If a local government collects a penalty (or fine) that is imposed under state law (as opposed to local ordinance) **and** the penalty is intended to punish the violator, then the clear proceeds of the penalty must be distributed to the local school administrative unit(s) in the county in which the penalty was assessed pursuant to **G.S. 115C-437**. A local unit should use the factors outlined above to analyze whether or not a charge imposed by state statute falls within the ambit of **Article IX, Section 7(a)**. A possible additional factor (not addressed by the court in *Richmond County School Board v. Cowell*) is the amount of the charge—the higher the charge, particularly relative to the costs imposed by the violation, the more likely that it is being imposed as retribution or to deter future violations. (This **post** provides a non-exclusive list of locally-collected charges that are imposed by state law and likely to be found to be punitive in nature. The clear proceeds from these charges should be distributed to the public schools.)

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_7A/GS_7A-304.html
- www.ncleg.net/Sessions/2015/Bills/House/PDF/H97v9.pdf
- www.ncga.state.nc.us/legislation/constitution/nconstitution.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-452.html
- canons.sog.unc.edu/?p=5991
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-437.html