



HENRY McMASTER
ATTORNEY GENERAL

November 16, 2010

Ralph H. Haile, Legal Counsel
South Carolina Human Affairs Commission
Post Office Box 4490
Columbia, South Carolina 29240

Dear Mr. Haile:

You have requested an opinion of this office seeking guidance as to the State Human Affairs Commission's obligation to enforce its statutory duties where there has been no appropriations covering the costs of enforcement by the Commission. As expressed by you, you are questioning how to handle an "unfunded mandate" that your agency is expected to continue to enforce without the personnel or money to do so.

The State Supreme Court in State ex rel. McLeod v. Mills, 256 S.C. 21, 26, 180 S.E.2d 638, 640 (1971) recognized that "[t]here is no doubt that the legislature has the power, where there is no constitutional prohibition, to suspend the operation of a statute." Consistent with such, an opinion of this office dated September 8, 2008 dealt with the question of whether school districts that were the recipients of certain funding under a grant program could carry forward funds to the current school year. It was indicated that the specific program had been deleted from the current budget and, therefore, the General Assembly did not appropriate funds for the program for the year in question. The opinion determined that

[b]y not funding the program at all in...(the specified fiscal year)...the Legislature chose to discontinue the program at least for that fiscal year. Because the Legislature sought to discontinue the program,...the Legislature sought to suspend the program's operation.

That opinion cited another opinion of this office dated June 30, 1986 which concluded that the Legislature's failure to fund a statutory mandate for the reduction in the pupil-teacher ratio made the statute inoperable.

An opinion of this office dated March 8, 1990 determined that if a designated appropriation was not made, the effect would be to suspend the operation of the statute in question for the current fiscal year. Another opinion of this office dated October 21, 1976 reached the similar conclusion that the failure by the General Assembly to appropriate funds for a particular purpose suspended the operations of a particular statute. See also: Op. Atty. Gen. dated June 1, 1977 ("...it was the intention

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of the Legislature to temporarily suspend...(certain statutes)...if it is determined that the present license charges will not be sufficient to meet the budgetary requirement.”).

These opinions of our office are consistent with the conclusions of the New Hampshire Supreme Court in Petition of Strandell, 562 A.2d 173 at 173 (N.H. 1989) that the failure of the New Hampshire legislature to appropriate the funds sufficient to fund a designated program “...did not result in implied repeal of...(the)...program, but merely limited administrative agency’s ability to implement...(the)...program.” The Court recognized that “appropriations acts have...(the)... limited and specific purpose of providing funds for authorized programs.” Id. at 176. The Court further stated that the ability of a division of State government to implement a statute “...may at some level be limited by the availability of resources.” Id.

See also: Grimball v. Beattie, 174 S.C. 422, 177 S.E. 668, 672 (1934) (“It will be seen that the Constitution prohibits any money being paid out of the state treasury except in pursuance of an appropriation made by law...The object of...(such a constitutional provision)...is to prohibit expenditures of the public funds at the mere will and caprice of those having the funds in custody without legislative sanction therefor.”).

Consistent with the above, in the opinion of this office, the State Human Affairs Commission could not likely be held liable for failure to enforce certain statutory duties if there has been no appropriations covering the costs of enforcement by the Commission. In other words, the Commission cannot be expected to handle an “unfunded mandate” where there is no personnel or money to do so. By not providing the funding for a particular statutory obligation, in the opinion of this office, a court would likely conclude that, from a legal standpoint, the General Assembly has chosen to suspend the Commission’s statutory obligations in such regard for the current fiscal year.

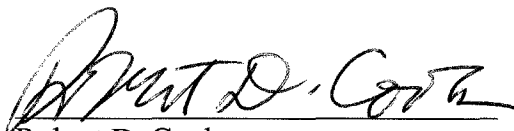
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General