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ATTORNEY GENERAL

May 7, 2012

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Dear Mr. Jones,

We received your letter requesting an opinion of this Office as to whether the Jasper County Council has the authority to require the County Treasurer to provide an employee of her office to work at an administrative satellite office the County Council recently established at a location outside the county seat. By way of background, you provide us with the following information:

Sometime ago, Council made the determination that to conveniently serve the citizens of Jasper County, it was necessary to open an administrative office annex in the Town of Hardeeville. Heretofore the principal county offices were located exclusively in the County Seat, Ridgeland. With the growth in the southern part of the county the County Council made the determination that an annex should be opened. The necessary work was completed and the annex equipped with the appropriate furnishings, computer services and telephones. However, the County Treasurer (an elected office in Jasper County) has consistently refused to provide a member of her staff to serve the public at the Hardeeville annex.

#### Law/Analysis

Jasper County operates under the council-administrator form of government. The County Council appoints the Administrator who serves as "the administrative head of the county government" and is "responsible for the administration of all the departments of the county government which the council has the authority to control." S.C. Code Ann. § 4-9-620. As you indicate, the Treasurer of Jasper County is an elected official. See § 4-9-60 ("Under the council, council-supervisor and council-administrator forms of government ... the county treasurer and the county auditor shall be elected").

We have previously recognized that a county government "is generally considered as having only limited authority in dealing with the authority or duties of an elected official ...." *Op. S.C. Att'y Gen.*, 2006 WL 1877110, at \*1 (June 19, 2006) (quoting *Op. S.C. Att'y Gen.*, 2006 WL 1207277, at \*2 (April 20, 2006)). As we have further explained, the Home Rule Act generally prohibits a county council from altering or regulating the duties or functions of an elected official whose office was created by statute or the State Constitution except in those areas where expressly authorized:

First, there is no language in the provisions of the 'home rule' legislation that would provide the Council with the authority to add to the duties of, or alter the functioning of, an elected official other than in areas such as employee grievances<sup>1</sup> [§ 4-9-30(7)], the establishment of an accounting and reporting system [§ 4-9-30(8)], and of a centralized purchasing system [§ 4-9-160] and the submission to it of annual fiscal reports from all county offices, departments, boards, commissions or institutions receiving county funds [§ 4-9-140]. Section 4-9-30(6) of the Code merely authorizes the Council to create and alter new agencies, to wit:

to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof, and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions, and positions, . . . [Emphasis added.]

That language does not empower the Council to modify or regulate existing county offices created either by statute or by the State Constitution as the case may be, except in the areas hereinabove specified.

Op. S.C. Att'y Gen., 1978 WL 34687, at \*2 (Feb. 7, 1978).

The office of county treasurer was created by statute. See § 12-45-10 (providing for the appointment, oath, and bond of county treasurers in all other counties). The duties and authority of county treasurers are generally set forth in Chapter 45 of Title 12 of the Code concerning the collection of taxes. See, e.g., § 12-45-70(A) ("The county treasurer ... shall collect the taxes in the manner prescribed by law ...."); § 12-45-80 ("The county treasurers of the respective counties may attend at certain safe and convenient places for the purposes of collecting taxes...."). In addition, prior opinions of this Office have concluded that county treasurers "are generally the proper parties to receive, hold, and disburse county funds under state law." Op. S.C. Att'y Gen., 2004 WL 736933, at \*1 (March 10, 2004) (citing Ops. S.C. Att'y Gen., 1986 WL 192058 (Oct. 6, 1986); 1979 WL 43548 (Aug. 29, 1979)).

In a prior opinion dated April 5, 1978, we specifically addressed the authority of a county governing body over an elected county treasurer in the context of changes made by the passage of the Home Rule Act:

Neither the Aiken County Council nor any official ... appointed by it has the authority to alter, expand or diminish [the] statutory duties [of the County Treasurer] except as specific legislation may so sanction it. The provisions of Act

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<sup>1</sup> At the time this opinion was issued, section 4-9-30(7) provided any employee discharged by an elected official the right to a public hearing before the county council as well as the right to submit grievances to a county grievance committee. However, in 1988 changes were made to the language of this provision concerning grievance rights. Based on this amendment, we have concluded that "no employee of an elected official ... who is discharged by such official, is entitled to a grievance hearing under Section 4-9-30(7)." Op. S.C. Att'y Gen., 2011 WL 6120333 \*4 (Nov. 18, 2011). Accordingly, it is no longer the opinion of this Office that a county council has the authority to alter the duties or functioning of an elected official in the area of employee grievances.

No. 283 of 1975, the 'home rule' legislation, do empower county councils to affect the functioning of elected officials in the areas of personnel policies and procedures, including employee grievances [§ 4-9-30(7)], the establishment of an accounting and reporting system [§ 4-9-30(8)] and of a centralized purchasing system [§ 4-9-160] and the submission to it of annual fiscal reports [§ 4-9-140]. These powers are broad, general ones and embrace elected officials and their offices as well as appointed officials. In my opinion, however, they do not authorize any usurpation of [the County Treasurer's] statutory duties to receive, maintain and disburse county funds....

Op. S.C. Att'y Gen., 1978 WL 34835, at \*3 (Apr. 5, 1978); see also Op. S.C. Att'y Gen., 2004 WL 736933 (March 10, 2004) (finding a county council would improperly diminish statutory duties of county treasurer if it created and maintained separate accounts for county funds and disbursed funds without knowledge or consent of treasurer, and concluding "such an alteration of the Treasurer's statutory duties could violate state law absent some authority allowing such actions by the County Council").

None of the areas mentioned in the above opinion, nor any other statutory provision that we are aware of, expressly provides the County Council with the authority to dictate the location where the duties of the Treasurer's Office are carried out. We note that the County Council has the statutory obligation of providing office room for numerous county officials, including the Treasurer. See § 4-1-80 ("The governing body of each county shall furnish the probate judge, auditor, superintendent of education, clerk of court, sheriff, treasurer and master in equity of their respective counties office room, together with furniture and stationary for the same, which shall be kept at the courthouse of their respective counties ...."). Our Supreme Court has held that section 4-1-80 does not prohibit such officials from maintaining satellite offices outside the county seat "for the convenience and protection of other residents of the county." Baker v. Dorchester County Council, 315 S.C. 143, 146, 432 S.E.2d 468, 470 (1993). Baker did not, however, address the authority of a county governing body to force an elected official operate and maintain such a satellite office.

For the reasons stated above, we believe the County Council would improperly alter or expand the statutory duties of the Treasurer if it were to force the Treasurer to operate and maintain a satellite office at a certain location in the County. The Legislature has afforded county treasurers a certain amount of discretionary authority in the manner and location in which they discharge their statutory duties. See § 12-45-80 ("The county treasurers of the respective counties *may attend* at certain safe and *convenient places* for the purposes of collecting taxes....") (emphasis added). In the absence of legislation expressly authorizing such action by the County Council or a decision by a court to the contrary, it is the opinion of this Office such an expansion of the Treasurer's statutory duties would violate state law.

Your question also implicates the authority of the County Council and the Administrator over personnel in the County. "[S]ubject to the general law of this State," the County Council is empowered:

(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated *except those elected directly by the people*, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority *does not extend to any personnel employed in departments or agencies under the*

*direction of an elected official* or an official appointed by an authority outside county government....

§ 4-9-30(7) (emphasis added). As the chief administrative officer of the County, the Administrator has the power to execute the policies and directives of the County Council, and is also responsible for the administration of personnel policies as well as the employment and dismissal of personnel subject to the employment authority of the County Council under section 4-9-30(7). § 4-9-630.

We have concluded that section 4-9-30(7) vests an elected official with the authority to employ, discharge, and generally manage the personnel within his or her office or department. Op. S.C. Att’y Gen., 2006 WL 1877110, at \*2 (June 19, 2006). Such authority, we determined, “would necessarily include assessing the functions and responsibilities of the department [or office] ... to determine how many employees are needed for the orderly conduct of business and what their duties will be.” Id. (quoting Op. S.C. Att’y Gen., 1991 WL 632921 (Feb. 21, 1991)).

Although the County Council’s power to develop personnel policies pursuant to section 4-9-30(7) expressly does not apply to elected officials such as the Treasurer, we have also interpreted this provision as subjecting an elected official’s employees to the personnel policies and procedures generally applicable to all county employees.<sup>2</sup> Op. S.C. Att’y Gen., 1996 WL 679532, at \*1 (Oct. 29, 1996). The question thus becomes to what extent the Administrator has the authority under section 4-9-630(7) to enforce such personnel policies against the employees of the Treasurer.

Section 4-9-650 provides that “[w]ith the exception of organization policies established by the governing body, the county administrator *shall exercise no authority over any elected officials of the county* whose offices were created either by the Constitution or by the general law of the State.” § 4-9-650 (emphasis added). We have interpreted “organizational policies” for purposes of section 4-9-650 as including those areas in which a county council is expressly empowered to act, e.g., in developing personnel policies and procedures, in establishing accounting, reporting and purchasing systems, and in formulating budgetary matters. Op. S.C. Att’y Gen., 1978 WL 34687, at \*2 (Feb. 7, 1978). Although the language of section 4-9-650 appears to impose no direct limitations on the Administrator’s authority to enforce personnel policies against the employees of an elected official, we have advised that a county council’s power to develop personnel policies “[cannot] be construed in any manner to infringe upon the authority of an elected official to make any decision regarding the employment and discharge of personnel in the elected official’s office.” Op. S.C. Att’y Gen., 1985 WL 165978, at \*1 (Jan. 24, 1985).

Consistent with the above prior opinions construing section 4-9-30(7), the Treasurer, as an elected official, has exclusive authority over the employment and discharge of personnel within her office, including the right to determine how many employees are needed to conduct business and

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<sup>2</sup> We note that our Supreme Court has carved out an exception to this general rule pursuant to which certain personnel of an elected official are not “employees” for purposes of county personnel policies under § 4-9-30(7) where the “general law” establishes that such personnel serve at the “pleasure” of the elected official. See Heath v. Aiken County, 295 S.C. 416, 418-19, 368 S.E.2d 904, 905-06 (1988) (holding legislature did not intend “employees” for purposes of § 4-9-30(7) include deputy sheriffs who, under the “general law,” serve at the “pleasure” of the sheriff); see also Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985) (statute specifically providing that employees of solicitor serve at his “pleasure” controls over § 4-9-30(7) which “speaks in a broad generalization referring only to elected officials”).



prescribe their duties. We believe this authority necessarily includes the right to determine the location where the services of such employees are needed. Although the employees of the Treasurer are subject to personnel policies developed by the County Council, the Administrator lacks the authority to enforce such personnel policies in any manner that would infringe upon the Treasurer's authority to make any decision regarding the employment and discharge of personnel in her office, including the decision of the location where such employees work. Therefore, it is the opinion of this Office that the Administrator lacks the authority to require an employee of the Treasurer, through the enforcement of personnel policies, to work at a satellite office in a certain part of the County.

This conclusion is supported by the reasoning of the South Carolina Supreme Court in Eargle v. Horry County, 344 S.C. 449, 545 S.E.2d 276 (2001), in which the Court affirmed the Court of Appeals' holding that a county administrator lacked the authority to suspend the employees of an elected county auditor for violations of county personnel policies, is instructive here. Noting the undisputed testimony of the auditor indicated "the suspensions would adversely affect her ability to perform her duties," the Court found that, "[t]aking the Auditor's assertions as true, the suspensions could be construed as an exercise of authority by the Administrator over the Auditor in violation of S.C. Code Ann. § 4-9-650." Id., 344 S.C. at 455, 545 S.E.2d at 280. The Court also found this conclusion was supported by certain policy concerns cited by the Court of Appeals,<sup>3</sup> stating:

The facts of this case bear out some of these concerns. It is undisputed that the employees the Administrator sought to suspend were acting with the permission of and under the direction of their elected supervisor. Granting the Administrator the authority to suspend in this case would require employees of elected officials to choose whose directives they will follow, those of the elected official or those of the Administrator. This result could not have been intended by the legislature....

Id. Furthermore, the Court found certain facts weighed in favor of denying the administrator such authority:

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<sup>3</sup> The Court of Appeals cited the following policy considerations in support of its decision:

As long as there are county-wide elective offices, there will be some tension between the elected officials and the county governing body. Certainly, a county governing body needs an appropriate level of control over county employees to ensure the smooth operation of county offices. However, to give the county governing body too much control over an elected official and his or her employees could force the elected official to place the interests and concerns of the governing body over those of the electorate. Moreover, a county governing body unhappy with the results of an election could use its power to render the duly-elected official largely ineffective. The various provisions of the Home Rule Act, particularly sections 4-9-30(7) and 4-9-650, reflect the General Assembly's striking of a careful balance between the county governing body's interest in the smooth operation of county offices and the electorate's interest in having its votes given effect.

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The Court of Appeals pointed out that the Auditor is directly elected by and accountable to the public, while the Administrator is not elected and only indirectly accountable to the public, through the County Council. These facts weigh in favor of denying the Administrator the authority sought herein. If the electorate is dissatisfied with the manner in which the elected Auditor operates her office, it can express its dissatisfaction at the ballot box.

Id. at 455-56, 545 S.E.2d at 280.

We believe the Supreme Court's reasoning in Eargle would provide considerable guidance to a court faced with the question of whether the Administrator has the authority to execute a policy against an employee of the Treasurer, the effect of which would be to require such employee to serve at the administrative satellite office. The exercise of such authority by the Administrator could be construed as a violation of section 4-9-650 if it would adversely affect the Treasurer's ability to perform her duties. Id., 344 S.C. at 455, 545 S.E.2d at 280. However, such a determination is a factual matter beyond the scope of an opinion of this Office and is better resolved by a court. See Op. S.C. Att'y Gen., 1978 WL 34687, at \*2 (Feb. 7, 1978) ("Whether or not the Council has, in any particular instance, exercised its ... authority so as to interfere with or prevent the proper function of an elected official's office is a factual matter which cannot be determined by this office").

However, the additional factors considered in Eargle support the conclusion that the Administrator lacks the authority to enforce any such policy against an employee of the Treasurer. You indicate the Treasurer has consistently refused to provide a member of her staff to serve at the satellite office. Thus, we believe allowing the Administrator the power to compel an employee of the Treasurer, an elected official, to serve at the satellite office would improperly force that employee to choose whether to follow the directives of the Treasurer or those of the Administrator. As the Supreme Court made clear, such a result was not intended by the Legislature. Eargle, 344 S.C. at 455, 545 S.E.2d at 280. In addition, a court would weigh the fact that the Administrator is appointed by the County Council, as opposed to the Treasurer who is elected by the public, in favor of denying the Administrator such authority. This is because the electorate, if not satisfied with the manner in which the elected Treasurer operates her office, "can express its dissatisfaction at the ballot box." Id., at 456, 545 S.E.2d at 280.

Even though the issue is not directly raised in your request, we find it necessary to note that the County Council has the authority pursuant to section 4-9-30 to "make appropriations for functions and operations of the county ...." Furthermore, section 4-9-140 instructs the County Council to "adopt annually ... operating and capital budgets for the operation of the county government ...." In consideration of these two provisions, we have recognized that the Legislature has given "broad authority and discretion to county governments to appropriate funds for county purposes." Op. S.C. Att'y Gen., 2007 WL 419432, at \*2 (Jan. 8, 2007).

In a previous opinion, we discussed a county council's ability to increase or decrease appropriations to specific county offices:

With reference to budgetary matters, while it is true that the Council exercises totally the budgetary authority of Aiken County and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions [§ 4-9-140], nevertheless, it cannot so decrease the appropriations of an

elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office. Whether or not the Council has, in any particular instance, exercised its budgetary authority so as to interfere with or prevent the proper functioning of an elected official's office is a factual matter which cannot be determined by this office.

Op. S.C. Att'y Gen., 1978 WL 34687, at \*2 (Feb. 7, 1978) (citations omitted); see also Op. S.C. Att'y Gen., 2007 WL 419432, at \*2 ("a county government's ability to decrease appropriations to the office of an elected official is limited in that the appropriations cannot be decreased to the extent that they prevent the office from functioning properly or abolish the office").

We previously concluded that a county council "can reduce the salary budget for the county and thereby reduce the staff of the Treasurer's Office." Op. S.C. Att'y Gen., 1992 WL 575671, at \*2 (Oct. 29, 1992). We stated that the issue of "[w]hether such reduction will cause the Treasurer's Office to function improperly is a question for the electorate to decide and resolve," and noted such a determination is also a factual matter beyond the scope of an opinion of this Office. Id.

However, we cautioned in another opinion that "because counties are prohibited by section 4-9-30(7) from terminating the employees of public officials, we are doubtful as to whether a court would allow counties to indirectly terminate an employee by abolishing their position through a reduction in appropriations for that position." Op. S.C. Att'y Gen., 2007 WL 419432, at \*3. Again, we advised that determinations as to whether such reductions would cause the affected offices to function improperly or would in fact constitute a termination are questions of fact beyond the scope of an opinion of this Office. Id.

In light of these prior opinions concerning the budgetary authority of county governing bodies, the County Council clearly has the authority to increase, decrease, or otherwise alter appropriations for the Treasurer's Office to the extent such budgetary modifications do not prevent the proper functioning of the Treasurer's Office. Thus, it seems the County Council could certainly increase appropriations, or provide a supplemental appropriation, to the Treasurer's Office for the express purpose of providing the Treasurer with funding for an additional employee who would serve at the satellite office. However, consistent with the Treasurer's exclusive authority over the employment and discharge of personnel with in her office pursuant to section 4-9-30(7), the Treasurer alone would have the right to make any decisions as to the hiring of an individual to fill such a position using the appropriated funds, including the decision of whether to fill the position at all. In the event the Treasurer chose not to use the appropriated funds to hire an employee to work at the satellite office, section 4-9-650 would prohibit the Administrator from forcing the Treasurer to do otherwise. However, the Treasurer would be prohibited from using the funds for any other purpose. See Op. S.C. Att'y Gen., 2003 WL 21040136, at \*4 (Feb. 21, 2003) ("it is apparent that a public official, such as an officer of county government, has a responsibility to use public funds subject to his or her control as the funds were intended by the governing body (i.e. county council)").

Furthermore, we would caution the County Council against any attempt to alter appropriations to the Treasurer's Office in such a way that would either force the Treasurer to relocate a current employee to work at the satellite office or have the effect of terminating a current employee of the Treasurer, e.g., by decreasing current appropriations to the Treasurer's Office and reallocating such funds in a manner that would condition the Treasurer's use of such funds on the hiring of an employee to work at the



satellite office. Again, we express doubt as to whether a court would allow the County Council to indirectly terminate an employee of the Treasurer by abolishing his or her position through a reduction in appropriations for that position. Op. S.C. Att'y Gen., 2007 WL 419432, at \*3. Furthermore, the County Council cannot indirectly accomplish what it cannot do directly. See Wagener v. Smith, 221 S.C. 438, 446, 71 S.E.2d 1, 5 (1952) ("if the General Assembly cannot obtain the result directly, it should not be permitted to do so indirectly ..."); Gamble v. Clarendon County, 188 S.C. 250, 198 S.E.2d 857, 860 (1938) (finding county enactment invalid where "[i]t is an axiom of constitutional government that the legislature cannot accomplish by indirection what it cannot directly do"). Based on our prior conclusion the County Council lacks the authority to directly force the Treasurer to operate and maintain a satellite office at a certain location in the County, the County Council cannot indirectly accomplish this goal through the exercise of its budgetary authority.

### **Conclusion**

It is the opinion of this Office that the Jasper County Council lacks the authority to force the Treasurer to operate and maintain a satellite office at a certain location in the County. Prior opinions of this Office dictate that the County Council is generally prohibited from altering the duties or functions of the Treasurer, an elected official whose office was created by the Legislature, except in those areas where expressly authorized by statute. We are aware of no statutory provision which expressly provides the County Council with the authority to dictate the location where the statutory duties of the Treasurer are to be carried out. The Legislature has otherwise provided county treasurers with a certain amount of discretionary authority in the manner and location in which they discharge their duties. Therefore, it is the opinion of this Office that the County Council would improperly alter or expand the statutory duties of the Treasurer if it were to force the Treasurer to operate and maintain a satellite office.

In addition, the Treasurer has exclusive authority over the employment and discharge of personnel within her office pursuant to section 4-9-30(7). We have previously construed this authority as including the right to both determine the number of employees needed for the orderly conduct of business and prescribe their duties. We believe this authority necessarily encompasses the right of the elected official to determine the location where the services of their employees are needed. Although the employees of the Treasurer are generally subject to personnel policies developed by the County Council, the Administrator lacks the authority to enforce such personnel policies in any manner that would infringe upon the Treasurer's authority to make any decision concerning the employment and discharge of employees within her office, including the right to determine the location where the services of such employees are needed. Therefore, we believe the Administrator lacks the authority to enforce county personnel policies against an employee of the Treasurer in a manner that would require that employee to serve at the satellite office location.

This conclusion is supported by the Supreme Court's reasoning in Eargle, a case we believe would provide considerable guidance to a court faced with any question concerning the authority of a county administrator over the employees of an elected official. That case indicates the Administrator's enforcement of personnel policies against the employees of the Treasurer could be construed as the exercise of authority over the Treasurer in violation of section 4-9-650 if it would adversely affect the Treasurer's ability to perform her duties. Although such a determination is a factual matter beyond the scope of an opinion of this Office, other factors considered by the Court in Eargle weigh in favor of denying the Administrator such authority. Allowing the Administrator to compel an employee of the Treasurer to work at the satellite office would force that employee to choose whether to follow the

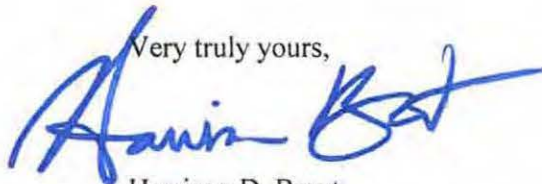


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directives of the Administrator or those of the Treasurer, a result the Court found the Legislature did not intend. In addition, the Eargle decision indicates a court would weigh the fact that the Administrator is appointed, while the Treasurer is elected, in favor of denying the Administrator such authority. This is because the Treasurer is directly accountable to the public electorate which "can express its dissatisfaction at the ballot box," while the Administrator is directly accountable only to the County Council.

Finally, we note that the County Council is afforded broad discretion in exercising its budgetary authority, and can thus decrease, increase, or otherwise alter appropriations to the office of an elected official such as the Treasurer. However, it cannot alter appropriations to the Treasurer's Office in such a way that would prevent the Treasurer's Office from functioning properly. Thus, we believe the County Council may properly increase appropriations, or provide a supplemental appropriation, to the Treasurer's Office for the express purpose of providing the Treasurer with funds to hire an additional employee who would serve at the satellite office location. In such case, the Treasurer alone would have the authority to make any decision as to the hiring of an individual to fill such a position using the appropriated funds, including the decision of whether to fill the position at all. In the event the Treasurer chose not to fill the position, the Treasurer would be prohibited from using the funds for any other purpose. That being said, we advise the County Council against any attempt to reallocate appropriations for a current position in the Treasurer's Office to provide funds for a new position at the satellite office location. Such action by the County Council could have the effect of indirectly terminating a current position in the Treasurer's Office, a result we have previously advised a court would likely not allow. Furthermore, such action could have the effect of indirectly forcing the Treasurer to relocate a current employee to the satellite office. It is an axiom of law that the County Council lacks the authority to accomplish that which it cannot do directly. In light of our previous conclusion that the County Council lacks the authority to directly force the Treasurer to provide an employee of her office to serve at the satellite office location, we believe the County Council is prohibited from indirectly accomplishing this goal through the reallocation of appropriations.

Very truly yours,



Harrison D. Brant  
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REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General