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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 19, 2003

Gwendolyn L. Fuller, Deputy Director & General Counsel
South Carolina Department of Insurance
Post Office Box 100105
Columbia, South Carolina 29202-3105

Re: Uninsured Motorist Fund

Dear Ms. Fuller:

You have requested an opinion from this Office concerning the effect of a temporary proviso on an inconsistent general law. By way of background, you have indicated that

In 1997, the South Carolina General Assembly enacted S.C. Act No. 154. This legislation reformed the private passenger automobile insurance delivery system in this state. The Act created, pursuant to § 38-77-151, a special fund known as the Uninsured Motorist Fund to be disbursed as provided by law. The funds are collected by the Department of Public Safety under Chapter 10 of Title 56, S.C. Code Ann. §§ 56-10-550 and 56-10-552 (Supp. 2001). The Director of this Department is given the authority to expend funds for the administration of Chapter 77; provided however, the Department shall retain ten percent of the Uninsured Motorist Fund to be used to enforce the provisions of Title 38 including Sections 38-77-112, 38-77-122 and 38-77-123, to publish for consumers an automobile insurance buyer's guide, a brochure comparing automobile insurance premiums, and to provide for a public awareness campaign. S.C. Code Ann. § 38-77-151 (2002)). The purpose of the Uninsured Motorist Fund is to reduce the cost of insurance required by Section 38-77-150 and to protect and educate consumers. S.C. Code Ann. § 38-77-154 (2002). The Director is supposed to distribute funds annually from the Fund among the several insurers writing motor vehicle bodily injury and property damage liability insurance on motor vehicles registered in this State. S.C. Code Ann. § 38-77-155 (2002).

During the last legislative session, the South Carolina General Assembly enacted Proviso 72.69 (2002-03 Budget Bill 4878 - Part 1B). The proviso provides:

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72.69. (GP:Flexibility) In order to provide maximum flexibility in absorbing the General Fund reductions mandated in this act as compared to FY 2001-02 general fund appropriations and to allow for the orderly transition of the downsizing of state government, agencies are authorized for FY 2002-03 to spend agency earmarked and restricted accounts designated as "special revenue funds" as defined in the Comptroller General's records, to maintain critical programs previously funded with general fund appropriations. Any increase in spending authorization for these purposes must receive the prior approval of the Office of State Budget and must be reported to the Governor, Senate Finance Committee, and the House Ways and Means Committee. The Comptroller General is authorized to implement the procedures necessary to comply with this directive. This provision is provided notwithstanding any other provision of law restricting the use of earned revenue. Notwithstanding proviso 72.14 (Transfers of Appropriations), appropriation transfers may exceed twenty percent of the program budget upon approval of the Budget and Control Board.

You have also indicated that "[t]he Office of the Comptroller General has designated the Uninsured Motorist Fund accounts as *restricted* accounts (emphasis yours)." Further, you state that it is the opinion of the Department of Insurance that the "... Department can use the funds to support the enforcement and regulatory operations functions of this Department."

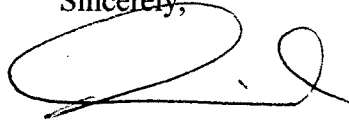
This Office has previously concluded that, in case of conflict between a provision of the annual appropriations act and an inconsistent general law, the provisions of the appropriations act would have the effect of suspending the provisions of the conflicting general law. See Ops. S.C. Atty. Gen Dated July 28, 1992, June 5, 1990, October 10, 1989 & November 21, 1978. Our opinion in this regard is based on and supported by longstanding authority from our Supreme Court. In State ex rel McLeod v. Mills, 256 S.C. 21, 180 S.E.2d 638 (1971), the Court cited with approval Brooks v. Jones, 80 S.C. 443, 61 S.E. 946 (1908); United States v. Mitchell, 109 U.S. 146, 3 S.Ct. 151, 27 L.Ed. 887 (1883); and, State ex rel. Buchanan v. State Treas., 68 S.C. 411, 47 S.E. 683 (1904) and held that "[a]n appropriation act, though generally in duration temporary, has equal force and effect as a permanent statute for the time being. If approved subsequently to such permanent act, and there is irreconcilable conflict, the latter is suspended during the time the appropriation act is of force." State ex rel McLeod v. Mills, 180 S.E.2d at 640.

I can locate no authority which would now call into question the above referenced court holdings and opinions of this Office. As such, it remains our opinion that in case of conflict between a provision of the annual appropriations act and an inconsistent general law, the provisions of the appropriations act would have the effect of suspending the provisions of the conflicting general law. It further appears that the principals expressed in our previous opinions are relevant to the questions

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raised in your request and therefore we would agree with the position of the Department of Insurance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to be "David K. Avant", with a large, stylized loop at the end.

David K. Avant
Assistant Attorney General

DKA/an