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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 23, 1998

The Honorable Earle E. Morris, Jr.
Comptroller General
State of South Carolina
Post Office Box 11228
Columbia, South Carolina 29211

Dear Mr. Morris:

You have asked for an opinion concerning the following situation:

I had previously written for an opinion as to whether my name and not just my title should appear on checks issued by the State of South Carolina, since such checks are issued pursuant to warrants by the Comptroller General. Your opinion seems to indicate that your position is that the laws are not sufficiently clear to state that my name is actually required.

Then by the same logic would it not be reasonable to conclude that there is no legal imperative that the treasurer's name appear on the check? Section 42 of Part II of the State Appropriations Act added Section 1-11-470 to the S.C. Code of Laws. If such names are not legally required on these documents would not subsection (B) of the aforementioned statute apply, thus requiring the State Treasurer to have unanimous approval of the Budget and Control Board for the printing of his name on the check. A printed name on the check is not necessary for bank purposes.

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LAW / ANALYSIS

S. C. Code Ann. Sec. 11-3-140 provides as follows:

[n]otwithstanding any other provisions of law to the contrary, the Comptroller General, after the installation of an electronic data processing system to serve the offices of Comptroller General and State Treasurer, shall present warrants for the payment of each State obligation directly to the State Treasurer, who shall then make payment of the obligation by check. The check form used by the State Treasurer for the payment of such obligation shall be so designated to indicate that payment is made upon authorization of a warrant of the Comptroller General. (emphasis added).

The statute speaks in terms of the "form used" by the State Treasurer for the payment of such obligation shall be do designated ..." (emphasis added). In essence, the provision empowers the State Treasurer to "use[]" and "designate[]" the "form" of State checks. The word "designate" typically means to mark out and make known, to point out, to name, to indicate or to signify a choice or selection. Red Top Sedan Service, Inc. v. S & J Transp. Inc., 150 So.2d 450, 456 (Fla. 1963). By so authorizing the Treasurer, it is evident that the General Assembly intended to bestow a certain discretion upon him with respect to the design of the State check form. The one requirement which the Legislature itself imposed in the designation of the form of the State check is that such form must "... indicate that payment is made upon authorization of a warrant of the Comptroller General."

As to this specific requirement that the check must indicate payment is being made upon authorization of a Comptroller General's warrant, our letter to you of May 6, 1997 concluded that such provision "does not literally address whether the Comptroller General's name must appear on the face of checks issued by the State." Thus, we observed as follows:

Certainly, nothing in the statute prohibits placement of the Comptroller General's name along with his title on the checks and apparently as you indicate, such practice has been followed for many years. While a court would give weight to past custom and practice, it appears that your question presents one more of policy--the designation of the "form" of the State checks--rather than a concrete legal issue. The purpose of the

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statute here is simply to provide assurance to the holder of such a check that its issuance rests upon the authority of a Comptroller General's warrant and it can be argued that simple reference to the issuance of a warrant by the "Comptroller General" adequately serves this purpose. Cf. State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992) (officer could rely upon simple verification by telephone that arrest warrant was outstanding in order to take defendant into custody). Our own Supreme Court has held that a complaint which does not allege that an official was the "director of public works" but only uses his individual name was an action against him individually, and not in his official capacity. Hanna v. McCain, 277 S.C. 419, 288 S.E.2d 810 (1982). Accordingly, given the fact that your question is more one of policy, rather than a legal issue, I would suggest that this matter be resolved amicably between your Office and the State Treasurer.

Accordingly, our earlier letter emphasized that, even with respect to the one requirement regarding the form of a State check contained in § 11-3-140 -- the mandate that the check indicated that payment is made upon authorization of a warrant of the Comptroller General -- whether or not the Treasurer placed the actual name of the Comptroller on the check, as opposed to his title, was a matter left to the discretion of the Treasurer; nothing in the statute, in other words, required such actual name, only that payment was being made pursuant to a warrant of the "Comptroller General".

Beyond that, however, as I read the statute, the designation of the "form" of the State check is left entirely to the Treasurer. Of course, the State Treasurer is responsible for the issuance of State checks. Pursuant to § 11-5-140, the Treasurer shall pay the "several amounts appropriated from year to year to meet the ordinary expenses of the State" Section 11-5-200 requires the State Treasurer to "make periodic payroll payments by Electronic Funds Transfer Systems when requested by the payee." The Treasurer is given, by § 11-13-30, the exclusive authority "to invest and deposit funds from any source" All State departments, board, bureaus, commissions or other State agencies must "... with ordinary business promptness, deposit [all State funds] when collected with or to the credit of the State Treasurer ..." pursuant to § 11-13-120. Section 11-13-125 designates the State Treasury a depository for all funds received by state departments and institutions. Finally, the Treasurer is empowered to "designate a form of deposit slip to be used by each department and institution in making deposits" This language authorizing the Treasurer to "designate" the deposit slip "form" is similar to the language of § 11-3-140 regarding the issuance of State checks. Thus, it is clear that the

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Treasurer "has by law the custody and control of the moneys of the State." 81A C.J.S., States § 135.

You emphasize that there is no legal requirement that the Treasurer's actual name must appear on the State check, either. I presume your reference is to the name of the Treasurer, Richard Eckstrom, which is imprinted at the top of the State check. However, in light of the fact that the General Assembly has delegated to the Treasurer the authority to "designate" the "form" of the check, the Treasurer is given by statute the discretion to print his name on the check in the same way as the average citizen prints his own name at the top of his own personal check.

Clearly the signature of the drawer of a check is an essential element of its validity. 10 C.J.S., Bills and Notes, § 10. Any writing to be a negotiable instrument within Art. 3 of the Uniform Commercial Code must be signed by the maker or drawer. 11 Am.Jur.2d, Bills and Notes, § 60. While it is clear that the drawer's name imprinted on the top of the check is not deemed sufficient signature to bind the drawer where there is a written signature at the appropriate place on the check, see Littky Mallon v. Mich. Mut. Bank of Detroit, 287 N.W.2d 359 (Mich. 1980), it is nevertheless customary also to imprint the drawer's name at the top of the check to provide additional indicia of the drawer's name, capacity, address etc. in case there is a dispute regarding the check and thus it must be construed in its entirety, as well as for identification purposes. See, § 34-11-60 (b) [full name, address and home telephone number may be recorded on the check or instrument itself]. Thus, it is both reasonable and prudent for the Treasurer to place his name on the State check for these same reasons.

I regret that this issue could not be resolved amicably between your Office and the Treasurer. However, the Treasurer is the one person the General Assembly has, by statute, empowered to "designate" the form of State checks. The Treasurer has chosen to place his name, but not the Comptroller's name, on State checks. Although this decision is in contrast to past custom it is, however, within the Treasurer's legal right and discretion to do. The courts will generally "not interfere to control the discretionary duties of the treasurer." 81A C.J.S., States, Id. Thus, where the Treasurer is given by law the custody and control of state funds, and thus must issue checks pursuant to warrants drawn by the Comptroller, and where the Treasurer possesses the discretion to "designate" the "form" of State checks, it is within the Treasurer's authority to imprint his actual name on the check. This decision to have the Treasurer's name imprinted on the check is both lawful and in keeping with sound practice in view of the fact that it is the Treasurer who is the drawer of the check. In my opinion § 1-11-470, requiring unanimous approval of the Budget and Control Board for a constitutional officer to print "extraneous promotional material", along with official documents, is not applicable, because the name of the

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Treasurer on a State check does not fall in the category of "promotional material", but is instead otherwise authorized by § 11-3-140.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph

REVIEWED AND APPROVED BY:



Zeb C. Williams, III
Deputy Attorney General